LITTLE-TONS TE-nures in English.

Lately perused and *amended.*

Mercy and grace

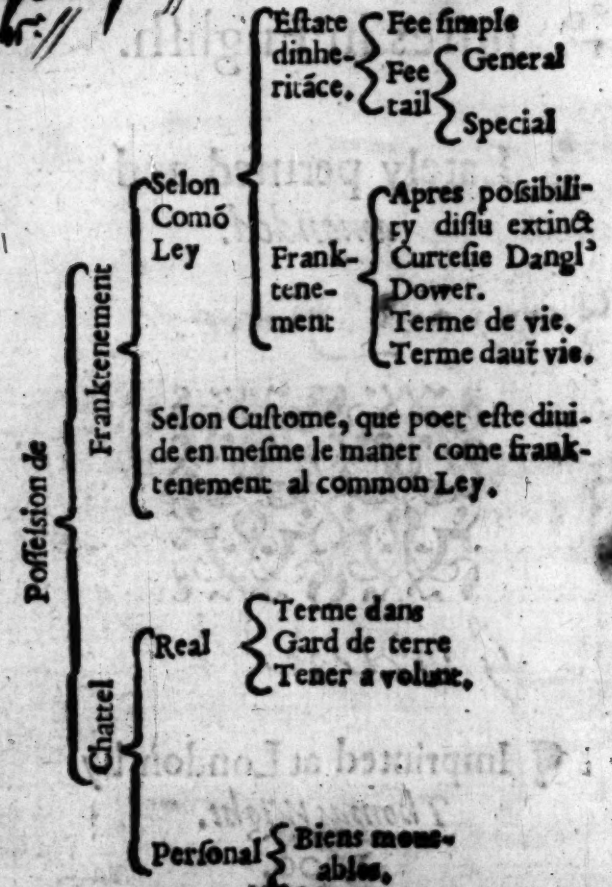
Garden

¶ Imprinted at London by *Thomas Wight.*

1572.
1600.
1594.
1583.

Cum Priuilegio Regiæ Maiestatis.

A figure of the diuiſion of Poſſeſſions.



JUN 13 1908

1 TEnaunt in fee simple is hee which hath landes or tenementes to holde to him and to his heires for euer: And it is
2 called in Latine Feodum simplex: for Feodum is called inheritance, and simplex is as much to say, as lawfull or pure, and so Feodum simplex is as much to say as lawfull or pure inheritance: For if a man will pur-
3 chase landes or tenementes in fee simple, it behooueth him to haue these wordes in his purchase, to haue and to hold vnto him and to his heires: for these wordes (his heires) make the estate of inheritance. Anno 10. Hen. 6. fol. 38 for if any man purchase land by these
4 wordes: To haue and to hold to him for euer, or by such wordes: To haue and to holde to him and to his assignes for euer: In these two cases he hath none estate but for terme of life, for that that hee lacketh these wordes (his heires) which wordes onely make the estate of inheritaunce in all feoffements and graunts.

5 And if a man purchase lands in fee simple, & die without issu, euery one that is his next cosin collaterall of the whole blood, how far soeuer that he be from him of degree, may inherite & haue the same land as heir vnto him. But if
6 there be father and son, & the father hath a brother which is vncle vnto the son, and the sonne purchaseth land in fee simple, & dieth without issuing y father, the vncle shal haue the land as heire

heir vnto the ſon, and not to the father (yet the father is more nigh of blood vnto the ſonne) for that that there is a ground in the law, that inheritance may lineally diſcend, but not lineally aſcend: yet if the ſon in ſuch caſe die without 7
iſſue & his vncle entreth into the land as heire vnto the ſon (ſo as he ought by the lawe) and after if the vncle deceaſe without iſſue liuing the father, thē ſhal the father haue the land as heir vnto the vncle, & not as heir vnto the ſon, for that that he commeth vnto the land by collaterall diſcent, and not by lineal aſcention.

And in ſuch caſe where the ſon purchaſeth 8
land in fee ſimple, and dieth without iſſue, they of his blood on the fathers ſide ſhall inherite as heire vnto him, before any of the blood of the mothers ſide. But if he haue no heire on the fathers ſide, then ſhal the land diſcend vnto his heire on the mothers ſide. And this is the opinion of ỹ Iuſtices M.12.E.4. fol.34. But there it was holden if any land diſcende 9
vnto a man by the fathers ſide which dyeth without iſſue, that his next heire on the fathers ſide ſhal inherit vnto him, that is to ſay, the next of blood of the father of the graundfathers ſide. And for default of ſuch an heire they that be of the fathers blood of the part of the mother of the father, (that is to ſay) the graundmother ought to inherite. And if there be no ſuch heire on the fathers ſide, then the Lord ſhall haue the land by Eſcheate. And ſo 10
it is if a mā take a wife inheritor in fee ſimple,

which hath iſſue a ſonne and dyeth, and the ſonne entreth into the tenements as ſonne and heire vnto his mother, and after dieth without iſſue, the heires on the mothers ſide ought
11 to inherit the tenements, and not the heires on the fathers ſide.

And if there be no heirs on the mothers ſide, then the Lord of whom the ſame land is holden, ſhal haue the ſame land by eſchete. In the ſame manner it is if lands diſcend vnto the ſonne on the fathers ſide, which entreth, & after dyeth without iſſue, the land ſhall diſcende vnto the heires on the fathers ſide, & not vnto the heires on the mothers ſide. And if there be none heires on the fathers ſide, then the Lord of whom the land is holden, ſhal haue the ſame land by eſchete. And ſo ye may ſee the diuerſitie, where the ſonne purchaſeth landes in fee ſimple, and where he cõmeth vnto thoſe lands or tenements by diſcent on the fathers ſide or on the mothers ſide.

Alſo if there be three brethren, and ỹ middle
11 brother purchaſeth lãd in fee ſimple and dyeth without iſſue, the elder brother ſhall haue the land by diſcent & not the yonger. Alſo if there be three brethren, and the yongeſt brother purchaſeth land in fee ſimple and dyeth without iſſue: the elder brother ſhall haue the land by diſcent, and not the middle brother, for ỹ that the elder brother is more worthy of blood.

And it is to be vnderſtood that no man ſhall
12 haue land in fee ſimple by diſcent as heir vnto any

any man, vnlesse he be his heire of the whole blood. For if a man haue issue two sons by ij. venters, and the elder purchaseth land in fee simple and dieth without issue, the yoonger brother shal not haue the land but the vncle of the elder brother or some other his nigh cosin shall haue it, for that that the yoonger is but of the halfe blood to the elder brother. And if a man haue a sonne and a daughter by one ventre, and a son by another ventre, and the son by the first venter purchaseth land in fee simple & dyeth without issue, the sister shall haue the land by discent as heire vnto her brother and not the yonger brother, for that that the sister is of the whole blood to her elder brother.

And also where a mã is seised of land in fee simple, and he hath issue a son and a daughter by one venter and a son by another venter and dieth, and the elder sonne entreth, and dyeth without issue, the daughter shall haue the land and not the yoonger sonne, and yet is the yonger son heire vnto his father but not vnto his brother. But if the elder sonne enter not into the land after the death of his father, but dieth before entre be made by him, then the yoonger brother may enter and haue the land as heire vnto his father. But where the elder sonne in the case aforesaid, entreth after the death of his father and thereof haue possession, then the sister shal haue the land. Quia possessio fratris de feodo simplici, facit sororem esse hæred. For the possession of the brother in fee simple

sie maketh the sister to be heire.

WS But if there be two brethren by diuers venters, and the elder is seysed in fee simple and dieth without issue, and his vncle entreth as heire vnto him, which also dieth without issue, then the yonger brother may haue the land as heire vnto his vncle, because he is of the whole bloud to him though hee be but of halfe bloud vnto his elder brother.

16 And it is to be vnderstood that this worde (Inheritance) is not onely vnderstood where a man hath lands or tenements by discent of heritage, But also euery fee simple or fee tayle that a man hath by his purchase, may bee said inheritance, for that, that his heires may inherite him. For in a writ of right that a man bringeth of land, that was of his owne purchase, the writ shall say: Quam clamat esse ius & hæreditatem suam. That is to say, which he claimeth to be his right & his inheritace. And so it shalbe said in diuers other writtes which a man or a woman bringeth of their owne purchase, as it appeareth by the Register.

WS 17 And of such thinges as a man may haue a manuel occupation, possession, or receyte, as of landes, tenementes, rentes, and such other, a man shall say in his pleading, and way of barre, that one such was seysed in his demesne as of fee. But of such thinges as lye not in manuel occupation &c. as of aduowson of a Church, and such manner thing: there he shall say, that he was seised as of fee, and not in his

demeſne as of fee. And in latin it is in ỹ ſame caſe ſaid. Quod talis fuit ſeiſitus in dominico ſuo vt de feodo, that is to ſay, that ſuch a one was ſeiſed in his demeſne as of fee, and in the other, Quod talis fuit ſeiſitus vt de feodo, that is to ſay, that one ſuch was ſeiſed as of fee.

And note well that a man may not haue a more large ne greater eſtate of inheritance, then fee ſimple.

Alſo, purchaſe is called the poſſeſſiõ of lãds or tenements that a man hath by his deede or by his agreement, vnto which poſſeſſion he cõmeth, not by diſcent of any of his anceſtors, or of his coſins, but by his owne deede.

Fee taile. 2.

TEnant in fee taile is by force of a ſtatute of Weſtminſter the ſecond, capitulo primo. For at the cõmon law before the ſaid ſtatute, all inheritances were fee ſimple. For all the gifts which bin ſpecified within the ſaid ſtatute, were fee ſimple cõditionally, as it appeareth by the rehearſall of the ſtatute. And now by the ſame ſtatute tenant in the taile is ſaid in two maners, that is to ſay, tenant in taile generall, and tenant in taile ſpeciall.

Tenant in taile generall, is where landes or tenements be giuen to a man and to his heires of his body begotten. In this caſe it is ſaid generall taile, for that that whatſoeuer woman that the tenant taketh to wife, if hee haue many wiues, and by each of them hath iſſue,

tisue, yet each one of these issues by possibilitie may inherite the tenements by force of the said gift, because that euery such issue is of his body ingendred.

4 In the same maner it is, where lands & tenements be giuen to a woman & to the heires comming out of her body, howbeit that shee haue many husbãds, yet the issue that she may haue by each husband, may inherite as issue in the taile, by force of such gifts. And therefore such gifts been called generall taile.

5 Tenant in taile speciall, is where landes and tenements be giuen vnto a man and his wife and the heires of their two bodies begotten. In such case none may inherite by force of such gifte, but those that be ingendred betweene them two, & it is called especiall taile, for that if the wife die and he taketh another wife and hath issue, the issue of the second wife shall neuer inherit by force of such gift, nor also the issue of the second husband if the first husband die.

6 In the same maner it is, where lands and tenements be giuen by a man vnto an other with a wife, which is the daughter or cosin to the giuer, in frankmariage, which gifte hath inheritaunce by these wordes (franke mariage) vnto it annexed, howbeit that they be not expressely sayd or rehearsed in the gifte that is to say, that these doners shal haue these landes or tenementes to them and to their heirs betweene them two ingendred, and this

is

is said especiall tayle, for that the issue of the second wife may not inherite.

And note well, that this worde Talliare, is 7
to say to set vnto some certeinty, or els limit vnto some certeine inheritance. And for that that it is limitted and set in certaine, what issu shall inherite by force of such giftes, and how long that the inheritance shall endure. Therefore it is called in Latin Feodum talliatum. i. hæreditas in quadam certitudine limitata. For 8
if tenant in generall tayle die without issue, the donor or his heires shall inherite as in their reuerlion: in the same wise is it of the tenant in the tayle speciall &c. For in euery gift of the tayle without more saying, the reuerlion of fee simple is in the donour.

And the donees and their heires shall doe 9
to the donour and to his heires, such seruices as the donour doth vnto his Lord next aboue. Except the donees in franke mariage, which shall hold quetly from euery manner seruice, (vnlesse it be for fealtie) vntill the fourth de- 11
gree be past. And after that the fourth degree is past, the issue in the fift degree, and so forth the other issues after him, shall holde of the donour & of his heires as they holde ouer, as is aforesaid.

And the degrees in franke mariage shall be 10
accompted in such maner, that is to say, from the donour to the donees in frank mariage the first degree, for that that the wife that is one of the donees ought to bee daughter, sister, or

other

other cosin to the donor. And from the donees vnto their issue shall be accompted the second degree. And from their issue vnto their issue, the third degree and so forth &c.

And the cause is, for that after euery such gift, the issues that come of the donor, and the issues that come of the donees after the fourth degree past of both parties in such course to be accompted, may betwixt them by the lawe of holie Church intermarrie. And that the donee in frankmariage shall be the first degree of the fower degrees, a man may see in a plee vpon a writ of right of Warde, Anno 31. Edwardi 3. where the plaintife pleadeth that his ayel or grandfather was seised of certayne landes &c. And that he held of another by knights seruice &c. which gaue the land vnto one Raufe Holland with his sister in franke mariage &c. And also these tayles before said, be specified in the said statute of Westminster the second.

11 And there bee diuers other estates in the tayle, howbeit that they bee not specified by expresse wordes in the said estatute, but they bee taken by the equitie of the Statute, As if landes be giuen vnto a man and to his heires males of his bodie engendred. In such case his heire male shall inherite, and the issue female shall neuer inherite, yet in these other tailes aforesaid it is otherwise. In the same maner it is if landes bee giuen to a man and to his heires females of his bodie engendred.

In

In this case his issue females shall inherite by force and fourme of the said gifte, and not the issue male, for that in such cases where the gift is who ought to inherite and who not, the will of the donour shall be obserued. And in case where lands be giuen vnto a man and to his heires males issuing of his body and he hath issue two sonnes and deceaseth, the elder sonne entreth as heire male, and hath issue a daughter and deceaseth, his brother shall haue the land and not the daughter, for that the brother is heire male. But it shalbe otherwise in these other tailes aforesaid, which bin specified in the said statute, the daughter shall inherite before the brother.

And if landes be giuen vnto a man, and to his heires males of his body ingendred and he hath issue a daughter, which hath issue a sonne and deceaseth, and after that the donour deceaseth: in this case the sonne of the daughter shall not inherit by force of the taile, for that whosoeuer shall inherite by force of a gifte in the tayle made vnto the heires males, behooueth to conuey his discent alway to the males. M. decimo octauo Edwardi tertii folio 25. But in such cale the donour shall enter for that the donee is dead without issue male in the lawe. In so much that the issue of the daughter may not conuey to him the discente by heire male. And in the same manner it is where landes bee giuen to a man and to his wife and to his heires

males

males of their two bodies ingendred.

Also, if tenements be giuen to a man and his wife, and to the heires of the body of the man ingendred, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

Also if lands be giuen to the husband and to the wife, and to the heires of the husband which he ingendreth of the body of the wife. In this case the husband hath estate in the speciall taile, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husbande ingendred: then the wife hath estate in the speciall taile, and the husband but for terme of life. But if lands be giuen to the husband and the wife, and to the heires that the husband ingendreth on the bodie of the wife: In this case both haue estate in the taile, for that this word (heires) is limitted no more to the one then to the other.

Also if lands be giuen to a man and to his heires that he ingendreth on the body of his wife: In this case the husband hath estate in the taile spectall, and the wife nothing.

Also if a man haue issue a sonne, and deceaseth, and the land is giuen to the sonne, and to the heires of the body of his father ingendred, this is a good tail, and yet the father was dead at the time of the gift.

Also

Also there be many other estates in the taile by the equity of the said estatute, that be not specified here. But if a man giue lands or tenemẽts to another, to haue and to hold to him and to his heires males, or to his heires females, he to whom such gift is made hath fee simple, for that it is not limitted by the gift of what body the issue male or female shall bee, and so it may not in any thing be taken by the equity of the said estatute, and therefore he hath fee simple.

Tenant in taile after possibilitie of issue extinct.

TEnaunt in the taile after possibility of the issu extinct, is where as lands or tenements be geuen vnto a man and to his wife in special taile, if one of them decease without issue, he that suruiueth is tenant in the taile after possibility of issue extinct. And if they haue issue, during the life of the issue, hee that suruiueth shall not be said tenant in the taile after possibilitie of issue extinct: yet if the issue decease without issue, so that there be none aliue that may inherite by force of the taile, then he that suruiueth of the donees is tenant in the taile after possibility of issue extinct.

Also, if landes bee giuen to a man and to his heires that be ingendred on the body of his wife: In this case the wife hath nought in the tenements, and the husband is seised as

as donee in speciall taile. And in this case if the wife decease without issue of her body ingendred by her husband, then the husband is tenaunt in the taile after possibility of issue extinct.

And note well, that none may be tenaunt in the taile after possibilitie of issue extinct, but one of the donees, or the donee in special taile, for the donee in general tail may neuer be said tenant in the taile after possibility of issue extinct, for that alway during his life, he may by possibilitie haue issue that may inherite by force of the same taile. And so in the same maner the issue that is heire vnto the donees in a special taile, may not be said tenant in taile after possibility &c. causa qua supra.

And tenant in taile after possibility of issue extinct shall neuer be punished of wast, for the inheritance that once was in him. Anno 10. Hen. 6. fol. 1. But he in the reuersion may enter if he doth alien in fee. An. 45. E. 3. fol. 22.

Tenaunt by the curtesie of England.

1 TEnaunt by the Curtesie of England, is where a man taketh a wife seised in fee simple, or in fee taile generall, or as heire in the taile special, & hath issue by the same wife male or female borne aliue. The issue after being dead or aliue, if the wife decease, the husband shall hold the same during his life by the Law

of

of England, and this is called tenant by the Curtelle, for that it is not vsed in any other Realme but onely in England. And some say that he shal not be said tenant by the Curtelle, but if the child that he hath by his wife bee heard crie, for by the crie is the proofe that the child that he had by his wife, was borne aliue.

Tenaunt in Dower.

Definitio TEnant in Dower is, where a man is seised of certaine lands or tenements in fee simple or in generall taile, or as heire in the taile special, and taketh a wife and deceaseth, the wife after the decease of her husbād shalbe endowed of the third part of such landes or tenements that were her husbands any time during the couerture, to haue and to holde to the same wife in seueralty, by meetes and boundes for terme of her life, whether she haue by her husband issue or none, and of what age that the wife be, so that she passe the age of nine yeres at the time of her husbands death, or elle shee shall not be endowed.

Natural common law. And note well, that by the common law the wife shal not haue for her dower but the third part of the tenements, which were her husbands during the espousels. By custome of some countrey she shall haue the halfe, and by custome of some Towne, or Borough, she shal haue the whole: And in all these cases she shal be said tenant in dower.

Also

Also there is two other maner of Dowers, that is to say, dower called dowment at the Church dooze, and dower called dowement by the fathers assent. Dowment at the church dooze, is where a man of full age is seised in fee simple which shall be wedded and a wife, when hee commeth to the Church dooze, and there after affiance and trueth pleight made betweene them, endoweth his wife of his whole land, oz of the halfe, oz lesse parcell, and there openly declareth the quantitie, and the certaintie of his lande that shee shall haue foz her dower: In this case the wife after the death of her husband shall enter into the saide quantity of lande, of which her husband endowed her, without the assignement of any man. Dowment by the fathers assent is, where the father is seised of landes oz tenementes in fee, and his sonne and heire apparant (when hee is wedded) endoweth his wife at the Church dooze of parcell of the landes oz tenements of his fathers, by thassent of his father, and assigneth the quantity of the parcels: In this case after the death of the sonne, the wife shall enter into the same parcell without the assignement of any other. But it hath bin said in this case, that it behoueth the wife to haue a deede of the father, prooving his assent and consent of such endowment. And if after the death of her husband shee enter and agree to any such dower of the said two dowers at the Church dooze, then she is concluded to claime

any other Dower by the common lawe of any landes or tenementes, which were of the said husband. But if she will, shee may refuse such dower at the Church dooze, and then she may be endowed after the course of the common Lawe. And note well, that no wife shall be endowed of the fathers assent, in the tourme aforesaid, saue where the husband is sonne and heire apparant to his father. 6

Inquire of these two cases of Endowement at the Church dooze &c. if the wife at the time of the death of her husband passe not the age of nine yeeres, if she shall haue such dower or no. 7

And note well, that in all cases where the certaintie appeareth, what landes or tenementes the wife shall haue for her dower, the wife may enter after the death of her husband, without assignement of any other: But where the certaintie appeareth not, as to bee endowed of the thirde parte, to haue in seuerall, or to bee endowed of the halfe after the custome, to holde in seuerally: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husbande, because it is not limitted before the assignement, what partes of landes or tenementes shee shall haue for her dower. But if there be two Joyntenants of certaine landes in fee, and the one alieneth that, that to him pertayneth and belongeth, to another in fee, which taketh a wife and after dyeth: In this case 8

the

the wife for her Dower shall haue the thirde parte of the halfe that her husband purchased, to holde in common, and occupie in common as her part amounteth, with the heire of her husbande, and with the other Joyntenaunt which altened not, for that in such case her Dower may bee assigned by meetes and boundes.

And it is to bee vnderstoode, that the wife shall not bee endowed of landes or tenementes that her husband iointly held with another at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesayd. And it is to wit, that if the tenaunt in tayle endowe his wife at the Church dooze as is aforesayde, that shall serue for little or naught to the wife, for that, that after the death of her husband the issue in the tayle may enter vpon the possession of the wife, and so may hee in reuersion if there be no issue in the taile altue.

Also if a man seised in fee simple being within age, endow his wife at the Church dooze and dieth, and the wife entreth. In this case the heire of her husband may put her out. But otherwise it is as it seemeth where the father is seised in fee, and the son within age endowe his wife, of his fathers assent, the father then being of full age.

And there is another Dower which is called Dowement De la pluis beale. And that is in such case, that a man is seised

of xl. acres of land, and he holdeth xx. of the said xl. acres of one man by knights seruice, and the other xx. acres of another in locage, & taketh a wife, and hath issue a son, and dyeth, his sonne being within the age of 14. yeeres, and the Lord of whome the lande is holden by knights seruice, entreth into the xx. acres of lande holden of him, and them hath and occuppeth as warden in chyualrie during the childes nonage, & the childes mother entreth in the remnant, and it occuppeth as garden or warden in Socage. If in this case the wife bring a writ of Dower against the Warden in Chiualrie, to bee endowed of the tenements holden by Knights seruice in the kings Court, or in any other Court, the garden in chiualrie may pleade in such case all the matter, and shewe how the wife is warden in Socage as is aforesaide, and pray that it may be adiudged by the court, that the wife endow her selfe of the most faire, called Plus beale, of the tenements that she hath as warden in socage, after the value of the third part that she claymeth to haue of the tenements in chiualrie by her writ of Dower, and if the wife may not gainesay it, then the iudgement shall be made, that the warden in chiualry shal hold the lands holden of him during the nonage of the childe quite from the woman &c. And that the woman may endowe her selfe of the most faire part of the landes that she hath as warden in Socage to the value of the thirde part

part that the warden in chiualry hath &c.

And after such iudgement giuen, the wife may take her neighbors, and in their presence endow her selfe by meetes and bounds of the fayrest part of the tenements that shee hath, as warden in Socage, to the value of the third part of the lands that the warden in Chiualry hath, and that to haue and holde for terme of her life. And such dower is called dower of the fairest part, or De pluis beale.

With this agreeth P. 45. Edw. 3. fol. 4. But there it was sayd, that after the time that the heire come to his full age, the wife shall haue a new action of Dower against the heyre, to be endowed of the third part of all that the man died seised. And note well that such dowment may not be, but where the iudgement is giuen in the kings court, or in some other court. And the wife may do this for saluation of the estate of the warden in chiualry during the nonage of the child. And so ye may see fiue manner of dowers, that is to say, dower by the common Law, dower by custome, dower at the Church doore, dower of the Fathers assent, and dower of the most faire. And remember that in euery case where a man taketh a wife seised of such estate of tenementes &c. so that the issue that hee hath by his wife may by possibility inherite the same tenementes of such estate that the wife hath, as heire to the wife: In such case after the wife is dead, hee shall haue the same tenementes by the curtesie of Eng-

land and otherwise not.

And also in euery case where the wife taketh an husband seised of such estate of tenements &c. so that by possibility it may happen the wife to haue some issue by her husband, and that the same issue may by possibility inherite the same tenements of such estate that the husband had as heire to his Father: of such tenements she shall haue her dower, and otherwise not. For if the tenements bee giuen vnto a man and to his heires that he getteth on his wiues body, in such case the wife hath nought in the tenements, and the husband hath estate but as donee in special taile. Yet if the husband die without issue, the same wife shalbe endowed of the same tenements, for that the issue that shee by possibility might haue had by ỹ same husband, may inherite the same tenements. But if the wife decease, liuing the husband, which after taketh another wife, the second wife shal not be endowed in this case. Causa qua supra.

A man was seised of certaine landes, and tooke wife, and after alened the same landes with warrantie, and after the feoffour and the feoffee died, and the wife of the feoffor bringeth an action of Dower against the issue of the feoffee, and hee vouched the heire of the feoffour, and during the voucher and not termined, the wife of the feoffee bringeth an action of Dower against the heire of the feoffee, and demaundeth the third parte of all that her husband was seised, and woulde not demaund

maund the third part of those two partes that her husband was seised, it was adiudged that shee should haue no iudgement vntill the time that the other plee were determined.

And also note that Vauisor saith, that if a man be seised of lands, and committeth Felonie, & alieneth, and after is attainted, the wife shall haue good action of dower against the feoffee. But if it be escheted vnto the king, or vnto the lord, she shal haue no writ of dower. And so see the diuersity, and inquire the caule.

Tenant for terme of life.

TEnant for terme of life is, where a man letteth landes or tenementes to another for terme of life of the lessee, or for terme of life of another man: In such case the lessee is tenaunt for terme of life. But by common language, hee that holdeth for terme of his owne life, is called tenaunt for terme of life, and he that holdeth for terme of another mans life, is called tenaunt for terme of another mans life. And it is to be vnderstoode, that there is feoffour and feoffee, donour and donee, lessour and lessee. The feoffour is properly where a man infeoffeth an other in any landes or tenements in fee simple, he that maketh the feoffement is called the feoffor, and he to whom the feoffement is made, is called feoffee. And the donour is properly, where a man giueth certaine landes or tenementes to another in

the taile, hee that maketh the gift is called donor, and hee to whome the gift is made is called donee. And lessour is properly where a man letteth to another certaine landes or tenements for terme of life, for terme of yeeres, or to hold at will, hee that maketh the lease is called lessor, and he to whom the lease is made is called lessee, and euery one that hath estate in lands or tenements for terme of his owne life, or for terme of another mans life, is called tenant of freehold. And none of lesse estate may haue freeholde, but they of greater estate may haue freeholde, for tenaunt in fee simple hath freeholde, and tenant in the taile hath also freehold.

Tenant for terme of yeeres.

TEnant for terme of yeeres is, where a man letteth landes or tenements to another for terme of certaine yeeres after the number of yeeres that is accorded betweene the lessor and the lessee, and when the lessee entreth by force of the lease, then is he tenant for term of yeres, and if the lessor in such case reserue to him a yeerely rent vpon such lease, he may choose for to distraine for the rent in the tenements letten, or els hee may haue an action of debt for the arrerages against the lessee. But in such case it behoueth that the lessour bee seysed in the same tenements at the time of his leale, for

it is a good plee for the lessee to say, that the lessor had nothing in the tenements at the time of the leale, except the leale be made by deede indented, in which case then such plee lieth not for the lessee to plead.

And it is to bee vnderstood, that in a leale for terme of yeeres, by deede or without deede, it needeth no liuery of seisin to be made to the lessee, but he may enter whensoeuer he will by force of the same leale. But of feoffementes made in the Countrey or gifres in the tayle, or leases for terme of life, in such cases where freehold shall passe, if it be by deede or without deede, it behoueth to haue liuery of seisin &c. But if a man let lands or tenements by deede or without deede for terme of yeeres, the remainder ouer to another for terme of life, or in the taile, or in fee, then in such case it behoueth that the lessor make liuery of seisin to the lessee for terme of yeeres, or els there shall nothing passe to them in the remainder, though the lessee enter in the tenements. And if the termor in such case enter before any such liuerie of seisin made vnto him, then is the freehold and the reuersion in the lessor. But if he make any liuery of seisin vnto the lessee, then is the freehold with the fee to them in the remainder after the forme of the grant, & will of the lessor.

And if a man will make a feoffment by deede or without deede, of landes or tenements that hee hath in many Townes in one Shire, if the liuery of seisin be made in one par-

parcell of the tenements in one towne in the name of all, it sufficeth for all the other lands or tenements comprehended in the same feoffement, in all other townes in the same Shire. But if a mā make a deed of feoffemēt of lands or tenements in diuers Shires, there it behoueth him to haue in euery shire a liuery of seisin. And in such case a man shall haue by the graunt of another fee simple, fee taile, or freehold, without liuery of seisin. And if two men be, and each of them is seised of a quantitie of land within one shire, & the one graunteth his land to the other in exchange for that land that the other hath, and in the same maner the other granteth his land vnto the first grantor in exchange for the land that the first grantor hath: In this case each may enter in the others lāds so taken in exchange without any liuery of seisin. And such exchange made by wordes of tenements within the same Shire without any writing, is good inough. And if the lands or tenements be in diuers shires, that is to say, if the one haue in one shire, & that th'other haue in another shire, it behoueth to haue a deed indented made betweene thē of such exchange.

And note, that in exchange it behoueth that the estates that both parties haue in the lands so exchanged, be equall: For if the one willeth & granteth that the other shall haue his land in the taile, for the land that he hath of the grant of the other in fee simple, though the other agree to that, yet this exchange is but void, for that

that the estates be not euen.

In the same maner it is where it is graunted and agreed between them, that the one shall haue in the one land fee taile, & the other shall haue in the other land but terme of life. Or if one shall haue in the one lande fee taile generall, and the other in the other land fee taile especiall &c. So alway it behoueth that in exchange the estate of both parties be euen, that is to say, if the one haue fee simple in the one land, that the other shall haue such estate in the other land, and if the one haue fee tayle in the one land, then the other shall haue likewise in the other lande. Et sic de alijs statibus. But it is nothing to charge of the euen value of the lands, for though that the land of the one is so much more in value then the land of the other, this is nothing to the purpose, so that ye estates made by the exchaunge be euen, & in exchange bee two graunts, for euery party graunteth his land to the other in exchange, and in each of their graunts mention shall bee made of the exchange.

And if a man let land to another for terme of yeeres, though the lessor die before the lessee enter into the tenements, yet may he enter into the tenements after the death of the lessor, for that, that the lessee by force of the leale hath right incontinent to haue the tenementes after the fourme of the leale. But if a man make a deede of feoffement vnto another, and a letter of attorney to a man to deliuer to him seisin

seisin by force of the same deede, yet if the liuery of seisin bee not made in the life of him that made the deede, it auayleth not, for that the other hath no manner of right to haue the tenements after the purport of the deede before the liuery of seisin &c. And if no liuery be made, then after the death of him that made the deed, the right of such tenements is incontinently in his heire or in some other. Also if tenements be let to a man for terme of halfe a yeere, or for terme of a quarter of a yeere &c. In such case if the lessee make waste, the lessour shall haue against him a writ of waste, and the writ shall say. Quod tenet ad terminū annorum. But he shall haue a special declaracion vpon the troth of this matter, and the plee shall not abate the writ, for that that he may haue no other writ vpon the matter. An. 7. H. 7. fol. 1.

Tenant at will.

TEnaunt at will is, where landes or tenements bee letten by a man vnto another: To haue and to holde to him at the will of the lessor, by force of which lease the lessee is in possession. In such case the lessee is called tenant at will, for that he hath no certaine sure estate for the lessor may put him out at what time it pleaseth him, yet if the lessee sowe the lande, and the lessor (after the sowing and before that his graynes bee ripe) put him out, yet shal the lessee haue his graines, and shall haue free egresse and regresse to reape and to carrie

his graines, for that he wist not at what time his lessour would enter vpon him. Otherwise it is if tenant for terme of yeeres before the end of his terme loweth the lande, and the terme end before that his graines be ripe. In this case the lessor, or he in the reuersion shall haue the graines, for that the termor knew well the certeinty of his terme, & when his terme should be ended.

Also if a house bee let to a man to holde at will, by force of which the lessee entreth into the house, within which house he bringeth his houshold stuffe, and after the lessor putteth him out, yet shall he haue free entre, egresse, and regresse in the same house by reasonable time to carrie his goods and houshold stuffe. And if a man be seised of a house in fee simple, fee tayle, or for terme of lyfe, the which hath certaine goods within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shall his executors haue free entre, egresse, and regresse to carrie out of the house the goods of their testators by a reasonable time.

Also if a man make a deede of feoffement vnto another of certaine land, and deliuereth to him the deed, but no liuery of seisin. In this case he to whom the deede is made may enter into the lande, and holde and occupy it at the will of him that made the deed, for that, that it is proued by the words of the deede, that it is his will that the other shal haue the land. But

he that made the deede, may put him out when he will.

Also if an house bee let to holde at will, the lessee is not holden to sustaine or repayre the house, as tenant for terme of yeeres is holden to do. But if the lessee at will make voluntary wast, as in putting downe of houses, or in cutting or felling of trees; It is said that the lessour shall haue for that against him an actiō of Trespas. As if I deliuer to a man my sheep to dunge or marle his lande, or mine oxen to eyre his land, and he slayeth the beasts, I may well haue an action of Trespas against him notwithstanding the deliuerie.

Also if the lessor vpon such lease at will reserue vnto htm a yeerely rent, he may distraine for the rent behind, or haue for that an action of debt at his owne choise, H.6. R.2. in a Repleuin.

Tenant by Copie of Court Rolle. 9

TEnant by Copy of Court roll is, as if a mā be seised of a Manour, within which Manour there is a custome, and hath beene vsed in time out of minde, that certaine tenants within that same Manor haue vsed to haue landes or tenements, to holde to them and to their heires in fee simple or in fee taile, or for terme of life &c. at the will of the Lorde, after the custome of the same Mannor, and such tenaunt may not alyen the lande by deede, for then

the lord may enter as in a thing forfait to him. But if he will alien his lande to another, him behoueth after some custome to surrender the tenements in some Court &c. into the Lordes handes, to the vse of him that shall haue the estate, in such forme, or to such effect.

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem Curia, vnum messuagium &c. in manus domini, ad vsum E. de A. & hæredum suorum, vel hæredum de corpore suo exeunt vel pro termino vitæ suæ &c. Et super hoc venit prædictus E. de A. & cepit de domino in eadem curia messuagium prædictum &c. Habendum & tenendum sibi & heredibus suis, vel sibi & heredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ suæ, ad voluntatem domini, secundum consuetudinem manerij, faciend. & reddend. inde redditus debit, seruitia, & consuetudines inde prius debita, & de iure consueta, Et dat domino de fine &c. Et fecit domino fidelitatem &c. That is to say, A. of B. commeth vnto this Court, and surrendreth in the same court a mease &c. into the handes of the Lord, to the vse of E. of A. and his heires, or the heires issuing of his bodie, or for terme of lyfe &c. And vpon that, commeth the foresaid E. of A. and taketh of the Lord in the same court, the foresaid mease &c. To haue and to hold to him and to his heires, or to him and to his heires issuing of his body, or to him for terme of life, at the Lordes will, after the custome of the manor to do and yeeld

theres

therefore rents, dets, seruices, and customes thereof before due and accustomed &c. and giueth the Lord for a fine &c. and maketh vnto the Lord his fealty &c. And such tenaunts be called tenaunts by Copie of Court Rolle, for that they haue no other euidences concerning their tenemenes, but the Copies of the Court Rolles: And such tenants shall not implead nor be impleaded for their tenementes by the kings Writ: But if they will implead other for their tenementes they shall haue a playnt made in the Court of the Lord in such forme, or to such effect. A. de B. quæritur versus C. de D. in placito terræ, videlicet, de vno meluagio, quadraginta acris terr, quatuor acris prati &c. cum pertinentiis. Et facit protestationem sequi querelam istam in natura breuis Domini Regis assisæ mortis antecessoris ad communē legem, vel breuis domini Regis Assise noue disseil, ad communem legem, That is to say, A. of B. complaineth against C. of D. of a plee of land: that is to say, of a meale, and forte acres of land, fower acres of medowe &c. with the appurtenances, And maketh protestation to sue his plaint in nature of the kings Writ of Assise of the death of his antecessor at the common Lawe, or by writ of our Soueraigne Lord the king, of Assise of nouel disseisin at the common Lawe, or in nature of some other writ &c. pledges to prosecute, F. G. &c. And though that some such tenants haue inheritance after the custome of the manor, yet they

they haue none estate but at the Lordes will, and after the course of the common Lawe, for it is said, if the Lorde put them out, they haue no other remedy but to sue vnto the Lorde by petition: For if they had any other remedie they should not be said tenants at the Lordes will after the custome of the Manor, but the Lord will not breake the custome that is reasonable in such cases. But Brian chief Iustice saith, that his opinion alwaies hath been, and alwaies shall bee, if such a tenant by custome (paying his seruices) be cast out by the Lord, he shall haue an action of trespas against him, H. 2. E. 4. fol. 80. And likewise was the opinio of Danby chiefe Iustice M. 7. E. 4. fol. 19. for he saith, that the tenant by the Custome, is aswel inheritable to haue the land after the custome, aswell as he that hath franketenement by the common Law.

TEnants by the Yarde, be in such nature as tenants by Copie of Court Roll: But the cause for which they be called tenants by the rodde, or yarde, is, for that when they will surrender their tenementes into the Lordes hand, to the vse of another, they shall haue a little yarde or rodde by the custome and vse, in their handes, which they shall deliuer vnto the Steward or Baylife, after the Custome and vse of the manor, and hee that shall haue the land, shall take the same land in the court, and his taking shall bee entred in the Rolle. And the Steward, or the bailife, according to

the custome, shall deliuer vnto him that taketh the land, the same yard or another yarde in the name of liuin. And for this cause they be called Tenaunts by the yarde. But they haue none other Euidence but Copie of the Court Rolle.

And also in diuers Lordships and Mannors there is such a custome, if such a tenaunt that holdeth by the Custome will alien his landes or tenements, hee may surrender his lands vnto the Baylife, or to the Reeue, or to two honest mẽ of ỹ same Lordship, to ỹ vse of him that shal haue the land, to haue in fee simple, fee taile, or for terme of life &c. and all that shalbe presented at the next court. And then he that shall haue the land by Copie of Court Roll, shall haue the same land after the intent of the surrender. And it is to wit, that in diuers Lordships, and diuers manors there be made diuers Customes in such cases, as to take tenements, and as to pled, & as touching other things and customes to be done, and all that, that is not against reason, may well bee admitted and allowed. And such tenants that hold after the custome of a seigntorie, or after the custome of a mannor, though they haue estate of inheritãce after the custome of ỹ Lordship, or of the manor, yet because they haue not any freehold by the course of the common law they be called Tenants of base tenure.

And diuers diuersities there be betweene a tenant at will, which is in by the lease of his lessor

lessor by the course of the common lawe, and tenaunt after the custome of the manor in the fourme aforesaid. For tenant at will after the custome may haue estate of inheritance, as it is aforesaid at the lords will after the custome and vsage of the Manor: But if a man haue lands or tenements which be not within such Manor or Lordship where such custome hath bin vsed in the fourme aforesayd, and will let such landes or tenements to another, to haue and to hold to him and to his heires at the will of his lessor, these wordes, to the heires of the lessee be void, for this is the cause, if the lessee die and his heire enter, the lessor shall haue a good action of trespas against him, but not against the heire of the tenant by the custome in any case &c. for that the custome of the manor in some case may helpe him to barre his Lord in an action of Trespas.

Also tenaunt by the custome in some places ought to repaire and sustaine the houses, and the other tenant at will ought not. Also one by the custome shall doe fealty, & the other not. And diuers other diuersities there be betweene them.

Thus endeth the first booke.

HOmage is a most honourable seruice and most humble seruice of reuerence that a Franketenaunt may doe to his Lorde. For when the Tenaunt shall make homage to his Lorde, he shall be vngirt, and his head vncouered, and his Lorde shall sit, and the Tenaunt shall kneele before him on both his knees, and hold his hands toinctly together betweene the handes of his Lord, and shall say thus. I become your man from this day forwarde of life and limme, and of earthly worship, and vnto you shall bee true and faithfull, and beare you faith for the tenements that I claime to holde of you, (saving the faith that I owe vnto our Soueraigne Lord the king.) And then the Lord so sitting shall kisse him.

But if an Abbot, or Prior, or any other man of religion shall make homage vnto his Lorde, he shall not say. I become your man, for that he hath professed himselfe onely to be Gods man. But he shall say thus, I doe you homage, and vnto you shall be true and faithfull, and beare you faith for the tenementes that I clayme to holde of you, saving the faith that I owe vnto our soueraigne Lorde the king.

Also if a woman sole shall make homage vnto the Lorde, shee shall not say, I become your woman, for that is not conuenient for a woman to say, that shee shall become a woman to any but onely to her husband

hand when he is wedded. But she shall say I make vnto you homage, and to you shal be true and faithful, and shall beare you faith for the tenements that I holde of you, saving the fayth that I owe to our Soueraigne Lorde the King.

But if a man haue seuerall tenacies which he holdeth of seuerall Lordes, that is to say, euery tenancy by homage. Then when he maketh homage vnto one of his Lordes, he shall say in the ende of his homage. Saving the faith that I owe vnto the king and vnto my other Lords.

And note well that none make homage, but such as haue estate in fee simple, or in fee tayle in his owne right, or in any other mans right. For it is a ground in the Lawe, that he that hath estate but for terme of life, shal make none homage, nor take none homage.

For if a woman haue landes or tenements in fee simple or in fee taile, which shee holdeth of her Lorde by homage, and taketh an husband and hath issue, then the husbande in the life of the wife shall make homage, for that hee hath title to haue the lande by the curtesie, if he surmount his wife. And also he holdeth in the right of his wife. But afore issue betweene them, the homage shall be made in both their names, but if the wife decease before homage made by the husband in the wiues life, and the husbande holdeth himselfe in as tenaunt by the curtesie, he shall make no homage vnto his

his Lord, for that he hath then none estate but for terme of life. More shalbe said of homage in the tenure of homage auncestrel.

Fealty.

FEalty is as much to say, as Fidelitas in latin, and when a frankstenant shall make fealty vnto the lord, he shall hold his right hand vpon a booke, and shall say thus.

Here you this my lord, that I vnto you shal be faithfull and true, and beare you faith for the landes and tenementes, that I clayme to hold of you, and truly to you shall do the Customes and seruices that I ought to do vnto you at termes assigned, as God me helpe & all his Saints, & then he kissed the booke. But he shall not kneele when he maketh his fealty, nor shall make such humble reuerence, as is aforesaid in homage. And great diuersity ther is had betweene making of fealty, and of homage. For homage may not be made but to ỹ Lord himselfe. But the steward of the lords court, or ỹ bailife may take fealty for the lord.

Also tenant for terme of life shal make fealty, and yet he shal make none homage, and diuers other diuersities there bee betweene homage and fealty. ws

Also a man may see a good note, Anno 15. Edw. 3. where and how a man and his wife made homage and fealty in the common bank which is written in such forme. Note that ws

John

John Lewknor & Elizabeth his wife made homage vnto William Thorpe in this manner: The one and the other held tointly their hands between the hands of Willia Thorp, & the husband said in this wise: wee vnto you make homage, & beare you faith for the landes that wee hold of A. your conusor, which hath graunted your seruices in B. and in C. and the other towns &c. against al men (sauing the faith that we owe vnto our soueraigne Lord the king, and to his heires, and to our other Lords) and the one and the other kissed him. And after they made fealty, & the one and the other held their hands togither vpon a booke, and the husband said the words, & both kissed the booke. More shall be said of Fealty in the tenure of Socage, & in the tenure of Franke almoigne, and in the tenure of Homage auncestrel.

Escuage.

Escuage is called in latin Scutagium, that is to say, seruice of shield. And such a tenãt that holdeth his land by Escuage, holdeth by knights seruice. And also it is commonly said, that some hold by a fee of knights seruice, and some by the half fee of knights seruice &c. And it is said, that when the king maketh a voiage royal into Scotland for to subdue the Scots, hee that holdeth by a fee of knights seruice, behoueth to be with the king by forty daies, wel & cõuenably arrayed for the warre. And

likewise he that holdeth his land by the halfe of a fee by knights seruice, ought to bee with the king by xx. daies. And he that holdeth his land by the fourth part of a fee by knights seruice, him behoueth to be with the king by ten daies: and so after the quantity, he that hath more, to doe more, and he that hath lesse, to do lesse.

But it appeareth by the plees and arguments made in a good plee vpõ a writ of Detinue of an Obligation, brought by one Hẽry Gray, An. 7. E. 3. fol. 29. that it needeth not to him that holdeth by Escuage to go himselfe, if he will find an able person for the warre conuenable arreyed for the warre, to goe with the king, & that seemeth good reason: for it may be, that he that holdeth by such seruice is sicke, in such wise that he may not goe nor ride.

And also an Abbot or any other mã of Religion, or a woman sole that holdeth by such seruice, ought not in such case to go in proper person. And Sir William Herle that time chiefe Iustice of the common place sayd in the sayd plee, that Escuage shall not be graunted, but where the king himselfe goeth in proper person. And so it abode in iudgement of the same plee, if these xl. daies shall be accompted from the day of the Muster of the kings host made by the commons and by the kings commaundement: Or els from the day that the king first entreth into Scotland &c. therefore inquire of this matter.

And

And after such voyage into Scotland it is commonly said, that by the authority of Parliamēt, the Escuage shalbe set and put in certaine: that is to say, a certaine summe of money how much euery one ẏ holdeth by a whole fee of knights seruice, which was not in his owne proper person, nor none other for him with the King, shall pay vnto the Lorde, of whom he holdeth his land by escuage, As put case that it was ordained by auctority of parliamēt, that euery one that holdeth by a whole fee by knightes seruice, which was not with the king, shall pay to his Lord xl.s. That he that holdeth by the halfe of a fee by a knights seruice, shall pay vnto his Lord but xx.s. and so who more, more, and who lesse, lesse. And some tenants hold, that if Escuage runne by aucthority of parliament to any summe of money, that they shall pay but the halfe of that summe, and some but the fourth part of that summe. But because the Escuage that they shal pay is not certain, for that it is at no certain what the parliament will assesse the Escuage, they hold by knights seruice. But otherwise it is of Escuage certaine, of which shalbe spoken of in the tenure of Socage.

And if a man speake generally of Escuage, it shal be vnderstood by the common speach of Escuage not certain, which is Knights seruice: And such Escuage draweth vnto him Homage, and Homage draweth vnto him Fealtie, for fealtie is incident to euery maner of seruice,

Homage: and fealty is incident to [illegible] seruices

seruice, but to the tenure of frãkalmoigne, as it shalbe laid hereafter in the tenure of frankalmoigne: So as he that holdeth by Escuage holdeth by homage, Fealty, and Escuage.

And it is to be vnderstood, that when Escuage is so sessed by authority of Parliament, euery Lord of whom the land is holden by escuage, shall haue the Escuage so sessed by the Parliament, because it is vnderstoode by the Lawe, that at the beginning such tenements were giuen by the Lords to hold by such seruices to defend their Lordes as well as the King, and to set in quet and rest their Lords against the King of Scots aforesaid. And for that such tenements came first of the Lordes, it is reason that they haue the escuage of their tenants.

And the lordes in such case may distrayne for the Escuage so assessed, or they may haue the kings writs directed vnto the Shyrifes of the Shires, to leuie such escuage for them, as it appeareth by the Regilter fol. 88.

But of such tenants that hold of the King by Escuage, which were not with the King in Scotland, the King himselfe shall haue the Escuage.

Item in such case aforesaide, where the King maketh a voiage royall into Scotland, and the Escuage is assessed by Parliament, if the Lord distraine his tenant that holdeth of him by seruice of a whole knights fee, for the escuage so assessed &c. And the tenant pleadeth and

and will auerre that he was with the king in Scotland &c. by xl. dayes, and the Lord will auerre the contrary, it is said that it shall bee tried by the certification of the Marshal of the Kings host in writing vnder his seale, which shalbe sent to the Justices.

Homage, Escuage, and Fealty.

TEnure by homage, escuage, and fealtie, is to hold by knights seruice, and it draweth vnto it ward, mariage, and relefe. For when such a tenãt dieth, his heire male being within age of 21. yeers, the Lord shall haue the lãd holden of him vnto the age of the heire of one & twẽty yeers which is called ful age, for that such an heire by the vnderstãding of the law, is not able to doe knightes seruice before the age of 21. yeeres.

And also if such an heire bee not maried at the time of the death of his aunceſter, then the Lord shall haue the ward, and mariage of him. But if such a tenaunt die, his heyre female beyng of the age of fowertcene yeeres or more, then the Lord shal not haue the ward neither of the lande nor of the bodie, for that a woman of such age may haue a husbande able to doe knights seruice. But if such an heire female bee within the age of foureteene yeere and not married at the time of the death of her aunceſter, then the Lord shall haue the

warde

warde of the lands holden of him, till the age of such an heire female of 16. yeeres. For that it is giuen by the statute of Westm. 1. cap. 12. that by two yeeres next following the said 14. yeeres, the Lorde may tender a conuenient mariage without disparaging of such an heire female. And if the lord do not tender her such mariage within the said two yeeres, then shee at the end of the saide two yeeres may enter and put out the lord. But if such an heire female be maried within the age of 14. yeeres in the life of the auncester, and the auncester die, she being within the age of 14. yeres, the Lord shall haue but the ward of the lande til an end of 14. yeres of age of such an heir female. And then her husband and shee may enter into the land and put out the Lorde, for this is out of the case of the statute. Insomuch that the lord cannot tender mariage to her that is maried &c. For before the sayd statute of Westm. 1. such issue female that was within age of 14. yeeres at the time of the death of her ancester, and after that shee had accomplished the age of fourteene yeeres without anie tender of marryage to her by the Lorde, such an heire female then might enter into the lande and put out the Lorde, as appeareth by the rehearsall, and by the wordes of the same estatute. So that the sayde Statute was made in such case all for the aduauntage of the Lorde as it seemeth. But yet that at all times it is vnderstoode by the wordes of the

same estatute, that the Lorde shall not haue the two yeere after the xviij. yere, as it is afore-said.

And note well, that the full age of the male and female after the common speeche is said the age of xxi. And the age of discretion is sayd the age of xviij. yeeres, for a childe at such age, which is wedded within such age to a woman, may agree to the mariage or disagree.

And if the Warden in chiualrie marrie once his ward within the age of xviij. yere, and after the age of xviij. yeres he disagreeth to the mariage. It is sayd by some folke that the childe is not holden by the Lawe to bee married another time by his Warden, for that the warden had once the mariage of him, and therefore he was out of his ward as concerning the ward of his bodie. And when he had once the mariage of him, and therefore was out of his ward, he shal no more haue the marriage of him. In the same maner it is if the Warden marrie him, and the wife die, the child being within age of xviij. yeeres, or xxi. yeres. And that the child may disagree to such mariage whē he cōmeth to thage of xviij. yere, it is proued by the wordes of the Statute of Mert. cap. 6. that saith thus: De dominis qui maritauerint illos quos habent in custodia sua villanis, & alijs sicut burgensibus vbi disparagent, si tales homines fuerint infra xiiij. annos, & talis ætatis quod matrimonio cōsentire non pos-

possint, tunc si parentes illius conquerent, dominus ille amittat custodiam illam vsque ad ætatem heredis. Et omne commodum qđ inde receptū fuerit conuertatur in commodum heredis infra etate existentis secundum dispositionem parentum, propter dedecus impositum. Si autē fuerit 14. annorum & vltra quod consentire poterit, & tali maritagio consenserit, nulla sequatur pena. And so it is proued by the same statut that no disparagemēt shalbe, but where that he that hath the ward marieth him within the age of 14. yeeres.

Also it hath bin a questiō how these words should be vnderstood. Si parentes conquerantur &c. And it seemeth vnto some that considering the statute of Magna charta cap. 6. that willeth that hæredes maritentur absque disparagatione &c. vpon which the said Statute of Merton vpon this poynt is grounded, as it seemeth, and in so much that it was neuer seene that any action was brought vpon the statute of Merton for such disparaging agaīst the Wardein, and if any action may be taken vpon such matter, it shalbe taken by common presumption before this time, or at some time to be put in vre, that these wordes shall bee vnderstoode in such manner. Si parentes conquerantur. i. Si parentes inter se lamentantur, which is as much to say, that if the Cosins of such a childe haue cause to make lamentation & complaint amongst them for the shame done to their cosin so disparaged

which

which is in a maner a shame to them all, then may the next cosin to whom the heritage may not discend enter, and put out the warden in Chiualry. And if he will not, another cosin of the childes may doe it, and hee to take the issues and profits vnto the vse of the child, and of that yeeld the child account when hee commeth vnto his full age: Or els the child within age may enter himself, & put out the Warden &c. Sed quære de hoc.

Also there are many other kinds of disparagings, which be not specified in ỹ same statute, As if the heire that is in ward bee married vnto one that hath but one foote, or one hand, or else deformed, or lame, or hauing an horrible disease, or else a great and continuall infirmity: Or if the heire male be maried to a woman past childe bearing. And many other causes of disparaging there bee, but inquire for them, for it is good matter to learne. And of heires males that bee within age of 21. yeeres after the death of their auncesters vnmaried: In such case the Lord shall haue the mariage of such an heire, and haue space and time to tender to him conuenable mariage without disparaging within the same time of 21. yeeres.

And it is to wit, that the heire in such case may chuse if hee will bee married or no. But if the Lorde which is called Wardeyne in Chiualrye, tender a conuenable marriage to suche an heire within the age

age of xxi. yeeres, without disparaging, and the heire refuse, and marry not himselfe within the same age: Then the said warden shall haue the value of the marriage of such an heire. But if such an heire male marrie himselfe within the age of xxi. yeeres, against the will of the warden in chyualrie, then shall the Warden haue double the value of the Marriage, by force of the Statute of Merton aforesaid, as in the same Statute is more fully compryzed.

And diuers tenants holde of their Lordes by knights seruice, & yet they hold not by Escuage, nor pay no escuage, as they that holde their lands by Castlewarde; that is to say, to keep a Tower of a Castle, or a gaole, or some other place by reasonable warning, whē their Lords heare tell that enemies will come, or be come into England. And in many other cases a man may hold by knightes seruice, and yet he holdeth not by escuage, nor payeth no Escuage, as shalbe said in the tenure of Graund Serieantie. But in all cases where a man holdeth by knights seruice, such seruices draw to the Lord, Ward, and Mariage.

And if a tenant that holdeth of his Lord by seruice of an whole knights fee die, his heire being of full age of xxi. yeeres, his heire shall pay vnto the Lord C.s. for a relieke. And he that holdeth by the halfe fee shall pay L.s.

Also if a man hold his lande of his Lorde by the seruice of two knightes fees, then the

heire at full age at the time of the death of his auncester, shall pay to his Lord ten pound for relieke.

Also if there be graundfather, mother, and sonne, and the mother dieth liuing the father of the sonne, and after the grandfather which held his land by knights seruice dieth seysed, and the land discēdeth to the sonne of the mother, as heire to the graundfather, which is within age: In such case the Lord shall haue the ward of the land, but not the warde of the heire: For that none shalbe in ward of his body liuing his father, because the father during his life shall haue the mariage of his heire apparant, and not the Lord. Otherwise it is, if the father bee dead liuing the mother, where the land holden in Chiualrie discendeth to the sonne on the fathers side &c.

Also if a man bee seysed of lande which is holden by knights seruice, and maketh a feffement in fee to his vse, and dyeth seysed of the vse, his heire within age, and no will by him declared, the Lord shall haue a writ of Right, of the body and the land, like as if the tenaunt had died seised of the demeine. And if the heire be of full age at the death of his auncester, in such a case he shal pay relieke, like as if he had bin seised of a demeine, and that is by the statute 4. H. 7. cap. 17.

Also there is a warden in right in chiualry, and a warden in deed in chiualry. Warden in right in chiualry, is where the Lord because

of his Lordship is seised of the warde of the land, and the heire vt supra. Warden in deed in chiualry, is where the Lord in such case after his seisling graunteth by deede, or without deed, the ward of the lande, or of the heire, or of both to another man, by force of which grat the grantee is in possession, then is the grantee called wardein in deed &c.

Tenure in Socage.

TEnure in Socage, is where the tenaunt holdeth of his Lorde the tenauncie by certaine seruice for all manner of seruice, so that the seruice be not knights seruice: As where a man holdeth his land of his Lord by fealty and certaine rent for all maner of seruice: Or els where a man holdeth his land by homage, fealty, and certaine rent, for all manner of seruices, for homage by it selfe maketh not knights seruice.

Also a man may hold of his Lord onely by fealty, and such tenure is Tenure in Socage, for euery tenure that is not tenure in Chiualrie, is tenure in Socage. And it is said, that the cause wherefore such tenure is said, and hath the name of tenure in Socage, is this, Quia hoc Socag. idem est, quod seruic. Socę, Et hæc Soca Socæ, idem est quod Caruca. s. one Soke, or one plough land.

And in olde time before the limitation of

of time out of mind, great parte of the tenants that helde of their Lordes by Socage, ought to come with their Ploughes euery of the sayd tenants by certaine dates in the yeere, to eyze and sowe the lordes landes of his owne graines: But for that such worlks were done for the liuelode and sustenance of their lords, they were acquited against their lorde of all maner of seruices. And for this that such seruice was done with their Ploughes, such tenure was called tenure in Socage. And after that such seruices were chaunged into diuers other manner seruices, by consent of the tenants, and by the desire of their lords, that is to say, into a yeerely rent &c. But yet the name of Socage abideth, and in diuers places tenauntes yet doe such seruice with their Ploughes vnto their Lorde, so that all manner of seruices that bee not Tenures in knightes seruice, bee called Tenures in Socage.

Also if a man hold of his Lord by Escuage certaine. That is to say in such fourme, that when Escuage runneth and is assessed by the Parliament to a more summe, or to a lesse summe, that the tenant shall pay to the Lorde but halfe a marke for escuage, & neither more ne lesse to howe great summe or little summe that the escuage runneth, in this case because the escuage is certaine before that any escuage is assessed &c. Such tenure is tenure in Socage and not knights seruice. But where the

ſumme that the tenant ſhall pay for eſcuage, is not certaine, that is to ſay, where it may bee ỹ the ſumme that the tenãt ſhall pay for eſcuage may be at one time more and another leſſe, after that it is aſſelled &c. then ſuch tenure is tenure by knights ſeruice.

Alſo if a man hold his land for to pay certeine rent to his Lord for caſtleward, ſuch tenure is tenure in Socage. But where the tenant himſelfe ought by him or by any other to make caſtleward, ſuch is tenure by knights ſeruice.

Alſo in all caſes where the tenaunt holdeth of his Lorde to pay to him any certaine rent, that rent is called rent ſeruice.

Alſo in ſuch tenures in ſocage, if the tenant haue iſſue and die, his iſſue being within the age of 14. yeeres, then the next friend [illegible] that heire to whom the heritage may not diſcende ſhal haue the ward of the land, and of the heir vnto the age of the heire of 14. yeres, and ſuch warden is called wardein in Socage. For if land diſcend to the heire by the fathers ſide, then the mother, or ſome other nigh Coſin of the mothers ſide ſhall haue the ward. And if land diſcend to the heire by the mothers ſide, then the father or the next friend of the fathers ſide ſhall haue the warde of ſuch lands or tenements. And when the heire commeth to the age of 14. yeres cõplete, he may enter and put out his warden in Socage, and occupie the land himſelfe if he will. And ſuch warden in

So:

Socage shall take no issues or profits of such lands or tenements to his owne vse, but only to the vse and profite of the heire, and of that shall yeeld account when it pleaseth the heire after that the heire hath accomplished the age of fourteene yeeres. But such a warden vpon such accompt shall haue allowance, of all his reasonable costes and expences of all things. And if such a warden marrie the heire within age of foureteene yeere, he shall make accompt to the heire or to his executors of the value of the marriage, though he tooke nothing for the value of the marriage, for that it shal be counted his owne follie, that hee would marrie him without taking the value of the mariage without hee marrie him to such a marriage that is worth in value as much as the marriage of the heire &c. Also if any other man that is not a nigh friend &c. occupy the lands and tenements of the heire as warden in Socage, hee shall bee compelled to yeeld accompt vnto the heire, as well as his next friende, For it is no plee for him in a writ of accompt to say that he is not his nigh friend &c. But hee shall aunswere whether hee occupieth the landes or tenementes as wardein in Socage or not. But inquire if after that the heire haue accomplished the age of foureteene yeere, and the warden in socage continually occupieth the lande till the heyre commeth to full age of 21. yeeres: If the heire at his full age shall haue an action of Accompt against the

warden for the time that he hath occupied after the said foureteene yeeres, as against his warden in Socage, or against him as against his bailife.

Also if warden in chiualry make his executors, and dye, the heire being within age &c. The executors shal haue the ward, during the nonage. But if the warden in Socage make executors and die, the heire being within the age of foureteene yeeres, his executors shall not haue the warde, but another nigh frend to whom the heritage may not discend, shall haue the warde. And the cause of diuersitie is, for that the warden in Chiualry hath the warde to his proper vse, and the warden in Socage hath not the ward to his owne vse, but to the vse of the heire. And in such case, where the warden in socage dyeth before any such accompt made by him, the heire is of that without remedie, for that no writ of accompt lyeth against the executors, but onely for the King.

Also the Lord of whom the lande is holden in Socage after the death of his tenaunt, shall haue relefe in such fourme. If the tenaunt holde by Fealty, and certaine rent to paye yeerely &c. If the termes of payment bee to pay by two termes of the yeere, or by fower termes of the yeere, the Lorde shall haue of the heire of his tenaunt, as much as the rent amounteth that hee should pay by yeere. As if the tenaunt helde of the

H: 16
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Lord by fealty, and x. shillings of rent, payable at certaine termes of the yeere, then the heire shall pay to the Lorde x.s. for relieke aboue these ten shillings that he shall pay for ỹ rent. Looke more in the Statute of Anno 19. H.7.ca.15.

And in such case after the death of the tenant, such relieke is due to the Lord incontinent, of what age soeuer the heire be, for that such a Lord may not haue the ward of the bodie nor the land of the heire. And the Lorde in such case ought not to abide the paiment of his relieke, after the termes and dates of payment of the rent, but he ought to haue his relieke incontinent: and therefore he may incontinent distraine after the death of his tenaunt for the relieke.

In the same maner it is, where a tenãt holdeth of his Lord by fealty, and by a pound of Comin, or a pound of Pepper by the yeere, & the tenant die, the Lord shall haue for his relieke a poũd of Comin, or a pound of Pepper.

In the same manner is it, where the tenant holdeth to pay by the yeere a certain nũber of Capõs or Hens, or a payre of Gloues, or certaine buthels of wheat, and such other maner thing. But in some case the Lord ought to abide to distrain for his relief til a certain time. As if the tenant hold of his Lord by a Rose, or by a bushell of Roses, to pay at the feast of S. Iohn Baptist. If such a tenaunt die in winter, then the Lorde may not distraine for

his relieke &c. vntil the time that the Roses by the course of the yeere may haue their growtngs &c. Et sic de similibus.

Also if any peraduenture will aske why a man may not hold of his Lord by fealty onely for all maner of seruices, insomuch, that when the tenant shal make his fealty, he shal sweare to his Lord that he shall do all seruices due, & when hee hath made fealty in such case, there is none other seruice due: To this it may be said, that where the tenant holdeth his land of his Lord, it behoooueth that he ought to do to his lord some maner of seruice, for if the tenãt nor his heires ought to do no maner of seruice to his lord, nor to his heire, then by long time continued it should be out of remembrance of whom the land was holden, of the Lord, or of his heire, or not, & then more oft & more sooner wil men say, that the land is not holden of the Lord nor of his heires, then otherwise: and vpon this the Lord shal loose his Escheate of his land, or percase other forfaiture or profite that he might haue of the land: So it is reason that the Lord & his heires haue some seruice done vnto him, for a proof, and a witnes ỹ the land is holden of them, and because fealty is incident to all maner tenures, except tenure in transalmoigne, as shal be said in Frankalmoigne, & because that the Lord wil not at the beginning of the tenure haue any other seruices but fealty, it is reason that a mã may hold of his Lord onely by fealty, and when he hath made

made his fealty he hath done all his seruice.

Also if a man let to another for terme of life certaine landes or tenements, without speaking of any thing to yeld to the lessor, yet he shal do to ỹ lessor fealty, for that he holdeth of him. And if a lease bee made to a man for terme of yeeres, it is said the lessee shall doe to the lessor fealty, for that he holdeth of him. And this is prooued well by the words in a writ of waste, when the lessour hath cause to bring a writ of wast against him, the which writ shal say, that the lessee holdeth the tenementes of the lessor for terme of yeeres: so that writ proueth a tenure betweene them &c. But he that is tenant at will after the course of the Common lawe, shal not make fealty, because he hath no maner of a sure estate. But otherwise it is of tenant after the custome of the manor, because that he is bound to do fealty to his Lord for two causes: One is, because of custome, the other is, because that he taketh his estate in such forme to doe fealty.

Franke almoigne.

TEnaunt in Franke almoigne is, where an Abbot or Priour, or another man of Religion, or of holy Church, holdeth of his Lord in Franke almoigne: that is to say in Latin, in liberam Elemosynam, that is to say, in free almes. And such tenure begã first in old time when a man in old time was seysed of landes or tenements in his demesne as of fee, and of the

the same land enfeoffed an Abbot and his co-uent, or Prior and his Couent, to haue and to hold of them and their successours in pure and perpetual almes, or in frankalmoigne, or by such words, to holde of the graunter, or of the lessor and his heirs in free almes: In such case the tenements were holden in frankealmoigne. And in the same manner it is, where the landes or tenements were graunted in olde time to a Deane and Chapter, and to their successors, or to a Parson of a Church, and to his successours, or to any other man of holy Churche, and to his successours in free almes, if he had capacity to take such grants or feoffements &c. And such as holde in free almes, be bound of right afore God to do Orisons, prayers, and Masses, and other diuine seruices for the soules of the grantors or feoffors, or for the soules of their heires which be dead, and for the prosperity & good life of them that be aliue.

And for this they do at no time no manner of fealty vnto their Lordes, for that such diuine seruice is better for them before GOD, then any doing of Fealty. And also these words, free almes, or frankalmoigne, exclude the Lord to haue any worldly or tẽporall seruice, but onely to haue diuine and speciall seruice to be done for him &c. And if such that hold their tenements in free almes, or frankalmoigne will not, or fayle to doe such diuine seruice as is saide, the Lorde may not

distraine

distraine them for the seruices vndone &c. because it is not set in certaine, what seruice they ought to doe: but the Lord may of them complaine to their Ordinary, praying him that hee will set punishment and correction of that. And also to prouide & see that such negligence be no more done, and the Ordinarie of right ought to do that &c.

But where an abbot or a Prior holdeth of his Lord by certaine diuine seruice in certein to be done, as for to sing a Masse euery friday in the weeke, for the soules &c. or euery yere at such a day to sing Placebo & Dirige &c. or to finde a Chaplein to sing masse &c. or to distribute in almes to an hundred poore men, an hundred pence at such a day, in such case if such diuine seruice be not done, ỹ lord may distraine &c. for that this diuine seruice is in certain by their tenure what the abbot or the prior ought to do. And in such case the Lord shall haue the fealty &c. as it seemeth.

And such tenure is not said tenure in free almes, but it is said tenure by diuine seruice, for in tenure in free almes, or franke almoigne, no mention is made of any manner certaine seruice, for none may hold in free almes or frank almoigne if there be expressed any maner certein seruice that he ought to do.

And if it bee demaunded if the tenaunt in frankmariage shall doe Fealty to the donour or to his heires before the fowerth degree be passed &c. It seemeth that yea, for hee is not like

like as to this intent to a tenant in free almes or franke almoigne, for the tenãt in free almes shall do (because of his tenure) diuine seruice for the Lord as it is aforesaid, and that hee is charged to do by the law of holy Church, and for that hee is excused & discharged of fealty. But tenaunt in franke marriage doth not by his tenure such seruice.

And if he do not to his Lord fealty, then he doth not to his Lord any manner of seruice neither spirituall nor temporall, which should be an inconuenience and against reason, that a man should haue estate of inheritance of an other, and yet the Lord shal haue no maner of seruice of him as it seemeth, and so it seemeth that he shall doe fealty to his Lorde vntill the fourth degree be past &c. And when he hath done fealty, hee hath done all his seruice. And if an Abbot hold of his Lord in free almes, & the abbot and his couent vnder their common seale alien the same laude to a seculer man in fee simple, in this case the seculer man shall do fealty to the Lord, for that he may not hold of his Lord in free almes, for if the Lord ought not to haue of him fealty, then hee shall haue of him no manner of seruice which should bee an inconuenience where he is Lorde, and the tenements are holden of him.

Also if a man grant at this day to an abbot or to a Prior, lands or tenements in free almes or franke almoigne, these wordes free almes or franke almoigne bee voide, for that

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it is ordained by the Statute which is called Quia emptores terrarum, which statute was made Anno 18. Regis E. primi. That no man may alien or grant lands or tenements in fee simple to hold of himselfe, so that if a man bee seised of certain lands or tenements which he holdeth of his Lord by knights seruice and at this day he graunteth the same land to an abbot &c. in free almes or franke almoigne, the Abbot shall holde immediatly the same tenements by knights seruice of the Lorde of his grauntor, because of the same estatute: so that no man may holde in free almes or in franke almoigne, but it it be by title of prescription, or by force of a graunt made to some of his predecessors before the same estatute, But the King may giue landes or tenementes in fee simple to hold in free almes or frankalmoigne or by other seruice, for hee is out of the case of the Statute, and note well that no man may holde landes or tenements in free almes, but of the grauntor or his heires, and that for the priuitie of the gift, and therfore it is said, that if there be Lorde mesne and tenant, and the tenant is an Abbot that holdeth of his mesne in franke almoigne, if the mesne die without heire, then the mesnaltie shall come by eschete to the said Lord aboue, and the abbot thē shall hold of him immediatly onely by fealty, & shall do him fealty, for that he may not hold of him in franke almoigne &c.

And note well, where that such a man of reli-

religiō holdeth his lands of his Lord in free almes &c. his Lord is bound by the law to acquite him of euery manner of seruice that any Lord aboue him will demaund or aske of the same tenants. And if he acquite him not but suffer him to be distrained &c. thē he shal haue against his Lord a writ of Mesne, and recouer his damages and costes of his suit.

Homage auncestrel.

TEnure by Homage auncestrel is, where a tenant holdeth his land of his Lord by homage, and the same tenant and his auncesters whose heire hee is, haue helde the same lande of the said Lord and of his auncesters, whose heire the lord is, from time out of mind by homage, & haue done homage vnto him which is called Homage auncestrel because of the continuance which hath been by title of prescription in the tenancy, in the blood of the tenant, & also in the lordship in the blood of the Lord. And such seruice by homage auncestrel draweth to it warranty, if the Lord that is aliue hath receiued homage of such tenaunt, hee ought to warrant his tenant when he is impleaded of the lands holdē of him by homage auncestrel. And all such seruice by homage auncestrel draweth to it acquitaunce, that is to say, the Lorde ought to acquite his tenant against all other Lords aboue him of euery manner of seruice. And it is said that if such tenaunt bee impleded by a Præcipe quod red-

reddat &c. and he voucheth his Lord to warrantie, which commeth in by processe, and asketh of the tenaunt what he hath to bind him to warrantie, and he sheweth how he and his auncestors, whose heire he is, haue holden the lande of the vouchee and of his auncestors, whose heire he is, by Homage from time out of mind: if the Lord which is vouched receiued none homage of the tenaunt, nor of any of his auncestors, the Lord then if he will, may disclaime in the Lordship, and so put out his tenant of his Warrantie. But if the Lorde which is vouched hath receiued homage of ỹ tenant, or of any of his auncestors, then may he not disclaime, but he is bound by the law to warrant the tenaunt, and then if the tenaunt leese the land in default of the vouchee, he shal recouer in value against the vouchee of the lands or tenementes that the vouchee had at the time of the voucher, or any time after.

And it is to wit, that in euery case where the Lorde may disclaime in his Lordship by the law, in Court of Record, and of that will disclaime, his seigniory is extinct, and the tenant shal hold of the Lord next aboue his lord which so disclaimeth. But if an Abbot or Priour be vouched by force of homage auncestrel &c. though he haue neuer taken homage &c. yet he cannot disclaime in this case, nor in none other case, for they cannot deuest that thing in fee, which hath beene vested in their house, Pasch. 10. E. 4.

Also

Also if a man that holdeth his land by Homage auncestrel alieneth his land to another in fee, the alienee shall do homage to his lord. But hee holdeth not of his Lorde by homage auncestrel, for that the tenancy was not cõtinued in the blood of the auncestors of the alienee, nor the alienee shall neuer haue the warranty of his land of his lord, for that the continuance of the tenancie in the tenaunt and in his blood by the alienation is discontinued. And so see, that the tenaunt that holdeth his land by homage auncestrel of the Lorde, and such a tenaunt alieneth in fee, though that hee take estate of the alienee againe in fee, he holdeth the land by homage, but not by homage auncestrel.

Also it is said, that if a man hold his land of his Lord by homage and fealty, & hee hath made homage and fealty to his Lord, and the Lord hath issue a sonne and dieth, and the Lordship discendeth to his sonne: In this case the tenaunt which did homage to the father, shall not do homage to his sonne, for that when a tenant hath made once homage to his lord, he is excused for terme of his life to make homage to any other heire of the lord: But yet he shall do fealty to the sonne and heire of his Lord, though that he made fealtie to his father.

Also if the Lorde after the homage to him made by his tenaunt, graunt the seruice of his tenant by deede vnto another in fee, and the te-

tenant attorneth &c. the tenaunt shall not bee compelled to do homage, but he shal do fealty, though hee did fealty before to the graunter. for Fealty is incident to euery attornement when the Lordship is granted. But if a man bee seised of a Mannor, and another man holdeth his land of him as of a Manor aforesaid by homage, the which hath done homage to his Lord which is seised of the manor, if after that a stranger bring a Præcipe quod reddat against the lord of the manor, and recouereth the manour against him, and sueth execution &c. in this case the tenant shall once againe do homage to him that recouereth the manor, for that the state of him which receiued homage before is defeated by the recouery. And it shall not lie in the mouth of the tenant to falsifie or defeate the recouery which was against his Lorde. And so see the diuersitie in this case, where a man commeth to his Lordship by recouery, and where hee commeth by discent, or graunt of the seignory.

And if a man tenaunt which ought by his tenure to do homage to his Lord, come to his Lord and say to him, Sir, I owe to do vnto you homage for the tenements that I hold of you, and I am ready to do you homage for the same tenemẽts, for the which I pray you that yee will now receiue it, and if the Lorde then refuse to receiue it, then after such refusall the Lord may not distrayne the tenant for the homage, before that the Lord require the tenant

to do homage, and the tenant refuse to do it.

Also a man may hold his land by homage auncestrel, & by escuage, or by other knights seruice, aswell as he might hold his land by homage auncestrel in Socage.

Graund Serieanty.

TEnant by Graund Serieanty is, where a man holdeth his lands or tenemēts of our soueraign Lord the king, by the seruice which he ought to do in his own proper person, as to beare the kings Banner or his Speare, or to lead his Host, or to be his marshal, or to beare his sword before him at his Coronation, or to be his Sewer at his Coronatiō, or his Carter, or Butler, or to be one of his Chamberlaines of his receit of his Eschequer, or to do such seruices &c. And the cause wherfore such seruice is called Graund Serieaunty, is for that it is more honourable, & worshipfull, and digne, then is the seruice of the tenure by Escuage, for he that holdeth by escuage, is not limitted by his tenure to doe any more especiall seruice, then any other that holdeth by escuage ought to do. But he that holdeth by Graund Serieanty, ought to do some especiall seruice to the king, that he that holdeth by Escuage ought not to do.

Also if the tenant which holdeth by escuage die, his heire being of full age, if hee held by a knights fee, the heire shal pay but an C.s. for his

his relieſe, as it is ordained by the Statute of Magna char. cap. 2. But he that holdeth of the king by Graund ſerieanty and dieth his heire being of ful age, ſhal pay vnto the king for his reliefe, the value of his lands or tenemẽts by the yeere, beſides ỹ charges & reprizes which he holdeth of the king by Graund ſerieantie. And it is to wit, that ſerieanty in latin is ſeruitium, & of Magna ſerieantia is Magnum ſeruitium, that is to ſay, a great ſeruice.

Alſo thoſe whtch hold by Eſcuage ought to do their ſeruice out of the realme, but they that holde by graund ſerieanty for the moſt parte ought to do their ſeruice within the realme.

And it is ſaid that in the marches of Scotland ſome hold of the king by cornage, that is to ſay, to blowe an horne for to warne the men of the countrey &c. when they heare that the Scots or other enemies will come to enter into England &c which ſeruice is graund ſerieanty &c. but if any tenant hold of any other Lord then of the king by ſuch ſeruice of cornage, that is not graund ſerieaunty, but it is knights ſeruice, and draweth to it ward, mariage, and reliefe, for none may hold by graund ſerieanty but of the king onely.

Alſo a man may ſee in the 11. yere of Henry the 4. fol. 27. that Cokein then being Chiefe baron of the Eſchequer came into the commõ place, bringing with him a copie of Record in theſe words. Talis tenet tantam terram de domino Rege per Seriantiam ad iuueniendum

vnum hominem ad guerrā infra quatuor maria &c. That is to say, such a man holdeth so much land of our soueraigne Lord the King by Serieanty to find one man appointed for the warre within the fower seas, & he demanded whether it was graund serieanty or Petty serieanty, and Hank. then saide that it was graund Serieanty, for that it was seruice to be done by the body of a man, & if that he may not finde a man to do seruice for him, hee must do it himselfe. To whom the other Iustices assented, Cokaine then said, the tenant in this case shall pay reliefe to the value of the lande by yeere, to the which was none answere, and note that al they that hold of the king by grād serieanty, hold of the king by knights seruice, & the king of that shall haue ward, mariage, & reliefe, but the king shall not haue of them escuage, if they hold not by escuage.

Petie Serieantie.

TEnaunt by petit Serieauntie is, where a man holdeth his lande of our Soueraigne Lord the King, to yeelde vnto him yeerely a Bowe, a Swoorde, a Dagger, or a Knife, or a Spere, or a paire of gloues of maile, or a paire of spurs gilt, or an arrow, or diuers arrowes, or to yeeld such other small thinges touching the warre, and such seruice is but Socage in effect, for that that the tenaunt by his tenure ought not to goe nor to doe any thing in his owne

owne proper person touching the warre. But to yeeld and pay yeerely certaine things vnto the King, as a man ought to pay a rent. And note that no man holdeth lande by graunde serieantie, nor by Petie serieantie, but of the King.

Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the king is lord, and they that haue tenements within the borough hold of the King their tenements, that euery tenant for his tenement ought to pay to the king a certeine rent by yeere &c. And such tenure is but tenure in Socage, and the same maner is where an other Lorde spirituall or temporal is Lord of such a Borough, and the tenants of the tenements in such a Borough hold of their Lord to pay eche of them yeerely an annuel rent, and it is called tenure in burgage, for that the tenementes within the Borough be holden of the Lord of the Borough by certaine rent &c. And it is to wit, that the auncient townes called Boroughes, bee the most auncient & eldest Townes that be within England, for the townes that now be Cities or counties, in old time were Boroughes and called Boroughs, for of such old townes called boroughs, came these Burgesses of the Parliament to the parliament when the king hath summoned his parliament.

Also for the greater part of such boroughs haue diuers customes and vsages which bee not had in other Townes, for some borough hath such a custome, that if a man haue issue many sonnes and dieth, the yongest sonne shal enherite all the tenements which were his fathers within the same borough as heire vnto his father, by force of the custome, the which is called borough English.

Also in some boroughs by the custome, the wife shal haue for her dower al the tenements which were her husbands.

Also in some borough by the custome, a man may deuise by his testament his lands and tenements which hee hath in fee simple within the same borough at the time of his death, & by force of such deuise, he to whom such deuise is made after the death of the deuisour, may enter into the tenements to him deuised, to haue and to hold to him after the fourme and effect of the deuise without any liuerie of seisin therof to be made to him.

Also though a man may not graunt nor giue his tenementes to his wife during the couerture, for that that his wife and he be but one person in the law, yet by such custome hee may deuise by his testament his tenementes to his wife to haue and to holde to her in fee simple, or in fee tayle, or for terme of lyfe, or yeeres, for that such deuise taketh no effect, but after the death of the deuisor. And if a man at diuers times make diuers testamentes and

diuers

diuers deuises &c. yet the last deuise and will made by him, shall stand and abide.

Also by such custome a man may deuise by his Testament, that his executors may alien and sell the tenements that he hath in fee simple, for a certaine summe, to distribute for his almes: in this case though the deuisor die seised of the tenements, and the tenements discend vnto his heire, yet the executors after the death of the testatour may sell the tenements so deuised, and put out the heyre, and thereof make a feoffement, alienation, & estate by deed or without deed, to them to whom the sale is made vnto.

And so may ye see a case, where a man may make a lawfull estate, and yet he hath nought in the tenemẽts at the time of the estate made: And the cause is for that, that the custome and vsage is such, Quia consuetudo ex certa causa rationabili vsitat, probat communẽ legem: For a custome vsed vpon a certain reasonable cause, proueth the common Law.

And note wel, no custome is to be allowed, but such custome as hath beene vsed by title of prescription, that is to say, from time whereof is no mind. But diuers opinions haue bin of time out of minde, and of title of prescription, which is all one in the law, for some men haue said, that the time of mind should bee said for time of limitation in a writ of right, that is to say from the time of king Richard the first after the Conquest, as is giuen by the statute of

Westminster the first, for that a writ of Right is the most highest writ in his nature that may be. And in such a writ a man may recouer his right of the possession of his auncestors, of the most auncient time that any man may by any writ by the law. And in so much that it is giuen by the sayd estatute, that in such a writ none shall bee heard to aske of the seisin of his auncestors of more longer time, then of the time of King Richard aforesayd, therefore this is prooued, that continuance of possession, or other customes and vsages vsed after the same time is title of prescription, and this is certain. And other haue said, that well and trueth it is, that seysin and continuance after the limitation &c. is a title of prescription, as is aforesaid, and by the cause aforesaid. But they haue sayd that there is also another title of prescription that was at the common law, before any estatute of limitation of writs &c. and that it was where a Custome or vsage, or other thing had beene vsed, for time whereof mind of man runneth not to the contrarie: And they haue said that this is prooued by the pleading, where a man will pleade a title of prescription of custome &c. he shal say that such custome hath beene vsed from time wherof the memory of men runneth not to the contrary, that is as much to say, when such a matter is pleded, that no man then a liue hath heard one proote to the contrary, nor hath no knowledge to the contrary, & in so much that such

such title of prescription was at the Common lawe, and not put out by any estatute, Ergo it abideth as it was at the common Lawe, and the sooner, insomuch that the said limitation of a writ of Right &c. is of so long time passed Ideo quære de hoc. And many other customs and vlages haue such ancient boroughs.

Also euery Borough is a towne, but not the contrary. More shalbe sayd of Customes in the tenure of Villenage.

Villenage.

TEnure in villenage is most properly when a Villein holdeth of his Lord (to whom he is villein) certain lands & tenements after ỹ custome of the Manor, or els at the will of his lord, & to do his lord villein seruice, as to weare, bring, and cary out the dung and filth of the Lord vnto the land of his lord, there to lay it, caste it, & spread it abroad vpon the land, and to doe such other manner of seruice. And some free tenants hold their tenements after the custome of certain manors by such seruice, and their tenure is called tenure in villenage, and yet they be no villeines, for no land holden by villenage, or villeine lands, or any custome rising of the lande, shall euer make a free man villein: But a villein may make free land to be villein land vnto his Lord. As if a villeine purchase land in fee simple, or in fee taile, the lord of the villein may enter into the land, and put out the villein and his heirs for euer,

euer, & after the Lord (if he will) may let the same land to the villeine, to hold in villenage.

Also if a feoffement bee made to a certaine person or persons in fee, to the vse of a villein, or if a villein, or any other persons be enfeoffed to the vse of a villeine, what estate soeuer the villeine hath in ỹ vse, in fee tayle, for terme of life, or yeeres, the Lorde of the villeine may enter in all those landes and tenements likewise as if the villeine had been alone seised of the demesne: And that is by the Statute of An. 19. H. 7. cap. 15. But if a free man will take any lands or tenements of his Lorde by such villeine seruice, that is to say, to pay a fine to his Lord for his mariage, or for the marriage of his sonne or his daughter, then shall he pay such a fine for the mariage &c. for that it is the folly of such a free man, to take in such fourme landes or tenements to holde of his Lord by such bondage, yet that maketh not the free mã villeine.

Also, euery villeine, eyther he is villeine by prescription, that is to say, hee and his auncesters haue beene villeins time out of mind, or he is villeine by his owne confession in Court of Recorde. But if a free man haue diuers issues, and after confesseth himselfe to be villein to another in court of Recorde, yet his issues whych he hath before the confession be free, but the issues whych he shall haue after the cõfession &c. shalbe villeins.

Also if a villaine purchase lands and alieneth

neth the same lands to another before his lord enter, then the lord may not enter, for it shalbe iudged his owne folly that he entred not whē the land was in the villeines hands. And so it is of his other goods, for if the villeine buie & sel, or giue goods, to another before that the Lord seised the goods, then the Lord may not seise thē, but if the lord before any such sale or gift commeth within the house of the villeine where such goods be, & there openly amōg the neighbours claime the same goods to be his, and so seise parcell of the same in name of seisin of al his goods &c. This is said a good seisin in the law. And the occupation that the villein hath after such claime in the goods, shall be taken in the Lawe, the right of the Lorde. But if the King haue any villeine that purchaseth lands & alieneth before that the King enter, yet the King may enter in the lande in whose hands the land commeth to. Or if the villein buy or sell diuers goodes before that the King seise the goodes, yet the King may seise them in whose hands soeuer they be Quia nullum tempus occurrit regi, for no time runneth against the king.

Also if a man let lande to another for terme of life, sauing the reuersion to him, and a villeine purchaseth of the lessour the reuersion, in this case it seemeth that the Lorde of the villeine may incontinent come to the lande and clayme the same reuersion as Lord of the same villeine, and by this clayme, the

the reuersion is incontinent in him, for in any other forme he may not come to the reuersion, for he may not enter vpon the tenant for terme of life, and if he ought to auoide till after the death of the tenant for terme of life, then happely he might come too late, for parauenture the villaine wil grant or alien it to another in the life of the tenant for terme of lyfe. In the same maner it is where a villeine purchaseth the aduowson of a Church full of an incumbent, that the Lord of the villein may come to the said Church and clayme the aduowson, And by this claime the aduowson is in him, for if he abide till after the death of the incumbent, and then present his Clarke to the said Church: Then in the meane time the villeine might alien the aduowson &c. & so put out the Lord from his presentation.

Also there is a villein regardant and a villeine in grosse. Villaine regardant is as if a man be seised of a Manour, to which a villein is regardant, and he that is seised of the said Manour, or they whose estate he hath in the same Manour haue bin seised of the said villein & of his ancestors as villains regardant to the Manour from time out of minde. And villein in grosse is where a man is seised of a Manour to the which a villein is regardant, he graunteth the same villein by his deed vnto another, then he is villein in grosse, and not regardant.

Also if a man and his Auncestours whose

whose heire hee is, haue beene seised of a Villaine and of his auncestours, as villaines in grosse time out of minde, such beene villaines in grosse, and note well that of such thinges which may not be graunted nor alienen without deede or fine, a man that will haue such thinges by prescription may not otherwise prescribe but in him, and his ancesters whose heire he is, and not by these wordes, in him and whose estate hee hath, for that, that hee may not haue their estate without deede or writting the which behooueth to bee shewed to the Court, if hee will haue any aduantage of this, and because that the graunt and the alienation of a villaine lyeth not without deede or other writting: a man may not prescribe in a villeine in grosse without shewing of writting, but in himselfe that claymeth the Villein and in his auncesters whose heire hee is, But of those thinges which bee regardant or appendaunt to a Mannour, or to other landes or tenementes, a man may prescribe that hee and they whose estate hee hath were seised of the Mannour of such landes or tenementes as regardantes or appendants to the Mannour or to such landes or tenements &c. from time out of minde, and the cause is for this that such a Mannour, landes and tenements may passe by alienation without deede &c. And it is to wit that nothing is named regardant to a Mannour but a villeine. But certaine other thinges, as Aduowsons and

Com-

commune of pasture &c. be named appendants to the Mannour or to other landes and tenements.

Also if a man in Court of Recorde knowledge himselfe to bee villaine that neuer was villeine before, suche one is villayne in grosse.

Also, a man that is villaine is called villayne, and a woman that is villeine is called nieke, and a man that is outlawed is called an outlaw, and a woman that is outlawed is called a wayue.

Also if a villaine take a free woman to wife the issue betweene them shal be villaine. But if a nieke take a free man to husband, their issue shall be free. And that is contrary to the Law ciuile, for there hee saith that partus sequitur ventrem.

Also no bastard may be villein, but if that he will knowledge himselfe to be a villeine in court of Recorde, for he is in the Lawe quasi nullius filius, as the sonne of no man, for that he may be inheritour to no man.

Also euery villeine is able and free to sue al manner of actions against euery person except against his Lord to whom he is villeine, and yet in certaine thinges hee may haue against his Lord an actiō, as of appeale for the death of his father, or of his other auncesters whole heire hee is, also a nieke which is rauished by her Lorde may haue appeale of Rape against him.

Also

Also if a villaine be made executor to an other, and the Lord of the villaine was indebted to the testator in a certaine summe of money, the which is not paied: In this case the villaine as executor to the testator, shall haue an action of Det against his Lord because he shal not recouer the Det to his proper vse, but to the vse of the testator.

Also the lord may not take out of ỹ possession of such a villeine, that is executour of the deads goods, and if he do, the villaine as executour shal haue an actiõ of Trespas against his Lord for the same goods so taken, and recouer damages to the vse of the testator. But in all these cases it behooueth the lord (which is defendaunt in such actions) to make protestation that the plaintife is his villaine, or els the villaine shall be enfranchiled, though the matter be found for the Lord against the villaine, as it is said.

Also if a villaine sue an action of Trespasse, or other action agaynst his Lord in one Shyre, and the Lorde sayth, that he shall not be aunswered, for that hee is villaine regardaunt to his Mannour in an other Shyre, and the plaintife sayth, that he is franke and of free estate, and no villaine, this shall bee tryed in the Shire where the plaintife hath conceyued his action, and not in the Shire where the Manour is, and this is in fauour of liberty, as it is adiudged Mich. 40. Edward the third.

And

And for this cause was made a statute in the 9. yeere of Richard the second, the tenure of which ensueth in such forme.

Also for that, where many Villeins and Nieces, as well of great Lordes as of other folke spiritual and temporal, flie and goe into Cities and places franchised, as the Citie of London, and other like places, and fayne diuers suites against their Lords, because they would make themselues to be infranchised, it is accorded and assented that the Lordes, nor none other shalbe forbarred of their villeines, because of their answere in the law. By force of which Statute, if any villeine will sue any maner of action to his owne vse in any Shire where it is hard to trie &c. against his Lord, his Lord may chuse to plead that the plaintife is his villein, or to pleade another matter in barre, and if they be at issue, and the issue be found for the Lorde, then the villeine, is villaine as hee was before, by force of the same Statute: But if the issue be found for the villain, then is the villaine frank & free, for that the Lorde tooke not for his plee, that the villain was his villain, but tooke it by protestation.

Also the Lorde may not Mayme his villaine, for if he Mayme his villaine, he shall of that be indicted at the Kings suite. And if he be of that attainted, he shal for that make greeuous fine and raunsome to the king. But it seemeth that the villaine shall not haue by the law

law any appeale of Mayme against his Lord, for in appeale of Mayme a man shal not recouer but his dammages. And if the villeine in that case recouer dammages against his Lord, and hath thereof execution, the Lord may take that that the villeine hath in execution from the villein, and so the recouery standeth voide.

Also if the villaine bee demaundant in an action reall, or plaintife in an action personell against his Lord, if the lord will plead in disability of his person, he may not make plaine defence, but he shall defend but the wrong and the force, and demaund iudgement if he shall be answered, and shewe his matter by and by how he is villeine, and demaund iudgement if he shall be aunswered.

Also, five manner of men there be against whom if they sue actions &c. iudgement may be asked if they shall bee aunswered: One is, where the villaine sueth an action &c. against his Lord, as in case aforesaid. The second is, where a man outlawed vpon an action of Det or Trespas, or vpon any other action or Inditment, the tenaunt, or the defendaunt may shew all the matter of the record and the outlawrie, and demaund iudgement if he shall be answered, because that he is out of the law to sue any action during the time that he is outlawed. The third is, where an alien borne out of the allegeance of our Soueraigne lord the King, if such alien sue any action reall or per-

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perſonall, the tenant or defendãt may ſay, that he was borne out of the kings allegeance, and aſke iudgement if he ſhall be anſwered. The fourth is, where a man by iudgement giuen 4
againſt him vpon a writ of Præmunire facias &c. is out of the kings protection, if he ſue any action, and the tenãt or defendant ſhew all the recorde againſt him hee may aſke iudgement if he ſhalbe anſwered. for the law & the kings writs be the thinges by which a man is protected and holpen, and ſo during the time that a man in ſuch caſe is out of the kings protection, hee is out of helpe and protection by the kings law, or by the kings writ.

The fift is, where a man is entred and 5
profeſſed into religion, if ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the order of S. Benet, and is there a Monke profeſſed, or in the order of friers Minors or preachers, and is there a frier profeſſed, and ſo of other orders of religion &c. and aſke iudgement if hee ſhalbe anſwered, & the cauſe is this, that when a man entreth into Religion and is profeſſed, he is dead in the lawe, and his ſonne or next coſin incontinent ſhall inherite him, al well as though hee were dead indeed, & when he entreth into religion, he may make his teſtament & his executours, and they may haue an action of det due to him before his entre into religion, or any other action that executors may haue, if he were dead

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in deed. And if he make none executors when he entreth into religion, then the ordinary may commit the administration of his goods to o-
6 ther as if he were dead in deed. The first is, where a man is accursed by the Lawe of holy Church, and he sueth an action reall or personall, the tenaunt or defendant may plead that he that sueth is accursed. & of this it behooueth him to shewe the Bishops letters vnder his seale, witnessing the accursing, and aske iudgment if he shalbe answered &c. but in this case if the demaundant or plaintife cannot deny it, the writte shall not abate, but the iudgement shall be that the tenant or defendant shall goe quite without day for this, that when the demaundant or plaintife hath purchased his letters of absolution, & shewed them to the court he may haue a resummons or a reattachment vpon his original after the nature of his writ &c. But in the other cases the writte shall abate &c. if the matter shewed may not be gainsaid.

Also if a villain be made a seculer priest, yet his lord may seyse him as his villein, and seise his goods &c. But it seemeth that if the villein enter into religion and is professed &c. that the lord may not take him nor seise him for that he is dead in the law. And no more then if a freeman take a wife to his wife, the lord may not take ne seise ỹ wife of the husbād. But his remedy is to haue an action against the husbād, for ỹ he tooke his wife to wife without his wil

and so may the lord haue an action against the soueraigne of the house that taketh & admitteth his villein to be possessed in ỹ same house without licence and will of his Lord &c. and shall recouer his dãmages to the value of the villain for he that is professed Monke &c. shal be a Monke, & as a Monke shall be taken for terme of his life natural, except he be deteined by the law of the holy Church, and hee is holden by his religion to keepe his cloister, and if the lord may take him out of the house, then he should not liue as a dead person, nor after his religion, which should be inconuenīēt &c. For if there bee wardein in Chiualry of body and lands of a childe within age, if the child when he commeth to the age of xiiij. yeere enter into religion & is professed the wardein hath none other remedy, as to the warde of the body, but a writ of Rauishment of warde against the soueraigne of the house. And if any being of full age, that is cosin and heire vnto the child enter into the lande, the wardein hath no remedy as to the ward of the land, because that the entre of the heire of the childe is lawfull in such case.

Also in many other cases the Lorde may make manumission and infranchising to his villaine. Manumission is properly when the Lord maketh his deede to his villaine to enfranchise him by this worde Manumittere, which is as much to say, as extra manū, & extra potestatē alterius ponere, as to put him out

of

of the hands and the power of another. And for this that by such a deede the villeine is put out of the hād and power of his lord, it is called manumission. And so euery maner of enfranchising made to a villeine, may bee said a manumission. Also if the Lord make to his villeine an obligation for a certaine summe of money, or graunt vnto him by his deede an annuity, or let him by his deede, landes or tenementes, for terme of yeeres, the villaine is enfranchised. And if the Lord make a feoffement to his villaine of any landes or tenements by deede or without deede in fee simple or fee tayle, or for terme of yeeres, and deliuereth vnto him the seisin, this is an enfranchising, but if the Lorde make to him a lease of lands or tenements, to holde at the will of the Lorde, by deede or without deede, this is no enfrancheising, for that hee hath no manner of certaintie nor suerty of his estate, but that ꝑ Lord may put him out when hee will. Also if a Lorde sue against his villaine a Præcipe quod reddat, if hee recouer or be nonsuit after apparance, this is manumission, for this that hee may lawfully enter into the land without such suit. In the same manner it is if hee sue against his villaine an action of Dette, or of accompt, or of couenant, or of Trespas, or such other this is an enfranchising &c. for this that he may emprison his villaine, & take his goods without such suit. But if the Lord sue his villaine by appeale of felony, this is

none enfranchising to the villeine though the matter of the appel is found against the lord, because that the lord may not haue the villein hãged wout such sute. But if the villein were not endicted of the same felony before the apel sued against him, and is aquited of the felony, so that he recouer damages against the Lord for the false appeal: Then in this case the villein is infranchised because of the iudgement of damages that was giuẽ to him against his lord. And more cases and matters there be by ẏ which a villein may be enfranchised against his lord Sed de illis quære. Also if a Lord of a Manor will prescribe that it hath bin accustomed within his manor, time out of mind, that euery tenaunt within the same Mannor that marrieth his daughter to any man wthout licence of the lord of the Mãnor shall make fine to the Lord for the time being, this prescriptiõ is void, for none ought to make such fines but only villains, for euery free man may freely marry his daughter to whom it pleaseth him, and his daughter. And because that this prescription is against reason, such prescription is void. But in the shire of Kent of lands holden in gauelkind, where by the custome vsed time out of mind the children males ought euenly to enherite, this custome is allowable, for this that it is with some reason, because that euery Sonne is as great a Gentleman as the elder sonne, and because of that more great honour and valure shall growe then if

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if he had nothing by his ancestors, where peraduenture he might not so grow &c.

Also, where by Custome called Borough English, in some Borough the yongest sonne shal inherite al the tenements &c. this custome also standeth with reason, because that the yõger sonne if he lacke father and mother, (because of his yong age) may least of all his brethren help himselfe &c. But if a man will prescribe, that if any cattel were dyõ the demeans of his manor, there doing damage, that ỹ lord of the mannor for the time being hath vsed to distraine them, & the distres to retaine til fine were made to him for the damages at his wil, this prescription is voyd, because it is against reason, that if wrong be done to a mã, that hee thereof should be his owne iudge, for by such way if he had damages but to the value of an halfepeny, he might alleile & haue therefore an C. li. which should be against all reason. And to such prescription, or any other prescription vsed, if it be against all reason, this ought not, nor will not be allowed before Iudges, Quia malus vsus abolendus est.

Rents.

Three manner of rentes there be, that is to say, Rent seruice, Rent charge, and Rent secke. Rent seruice is, where a man holdeth his land of his Lord by fealty & certain rent, or by other seruice, and certaine rent, or by homage, fealty, and certaine rent, and if rent

seruice at any day that it ought to be paied, be behinde, the Lorde may distraine for that of common right. And if a man now will giue landes or tenements to another in the tayle, yeelding to him certain rent by the yeere, he of common right may distraine for the rent behinde, though that such gift was made without a deede, because that such rent is rent seruice: But in such case where a man vpon such a gift or lease, will reserue to him rent seruice, it behoueth that the reuersion of the lands & tenements be in the donor, or in the lessor: for if a man will make a feoffement in fee, or will giue landes in the taile, the remainder ouer in fee simple, without a deede, reseruing to him certaine rent, such reseruing is void, because that no reuersion is in the donor, and such a tenant holdeth his lande immediatly of the Lord of whom his donor held. And this is by force of the statute of Westminst. the 3. cap. 1. Quia emptores terrarum, For before the same estatute, if one made a feoffement in fee simple by deed or without deed, yeelding to him or to his heires certaine rent, this was rent seruice, and for this he might distraine of common right: And if he made no reseruation of any rent, nor of any seruice, yet the feoffee held of the feoffor by such seruice, as the feoffor helde ouer of his Lord next aboue. But if a man by deed indēted at this day, make such a gifte in the tayle, the remainder ouer in fee &c. or feoffement in fee, and by the same Indenture

Reservation.

denture reserueth to him and to his heires a certaine rent, and that if the rent bee behinde, that it shall be lawful to him and to his heires to distraine &c. such rent is rent charge, because such lands and tenemets be charged of such distresse by force of the writtng only, and not of comon right. And if such a man in such a deed indented, reserue to him & to his heires certaine rent, without any such clause set or put in the deed, that he may distraine &c. that such rent is rent secke, because that he cannot distraine to haue the rent if it be denied by the same distresse, and if hee were neuer seised in this case of the rent, he is without remedy, as shalbe said hereafter.

Also if a man seised of certaine land, graunt by his deed Poll, or by Indēture, a yerely rēt issuing out of the same land to another in fee simple, or in fee taile, or for terme of life &c. with clause of distresse &c. then that is rent charge, and if it be without clause of distresse, then it is rent secke. And note well, that rent secke. Idem est quod redditus siccus, because that no distresse is incident to it.

Also if a man grant by his deed rent charge to another, & the rent is behinde, the graunter may chuse if he will sue a writt of annuity of it against the graunter, or distraine for the rent behind, and the distresse to withhold till he be of that paied: But he may not doe & haue both together, for if he take a writt of annuitie, then the land is discharged, and if he sue not a writ

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of annuity, but distrain for the arrerages, and the tenant sueth a Replegiare &c. and the grãtee auoweth the taking of the distresse in the land &c. in Court of record, then is the land charged, and the person of the grãtor discharged of an action of annuity.

Also, if a man will that another shal haue a rent charge issuing out of his landes, but hee will not that his person shal be charged in any manner by a writte of Annuity, then hee may haue such clause in the end of his deede, Prouiso semper quod presens scriptum nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personã meam per breue de annuali redditu, Sed tantummodo ad onerandũ terram & tenementa prædꝯ de annuali redditu prædꝯ, and then is the land charged, & the person of the grantor discharged.

Also, if a man make such a deed in such manner, that if A. of B. be not yeerely paied at the feast of Christmas for terme of life xx. s. of lawful money, that then it shalbe lawfull to the said A. of B. to distraine for it in the manor of &c. this is a good rent charge, because that the manor is charged of the rent by way of distresse: and yet the person himselfe that made such a deed is discharged in this case of an action of annuity, because that he granted not by his deed any annuity to the said A. of B. but grãted only y he may distrain for his annuity.

Also, if a man haue a rent charge to him and to his heires issuing out of certaine land,

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if hee purchase any parcell of the lande to him and to his heires, all the rent is extinct and annulled because that rent charge may not in such maner be apportioned, but if a man that hath rent seruice purchase parcell of the lande whereof the rent is, this shall not extinct all, but for the portion. for that rent seruice in such case may be apportioned, and shall be apportioned after the value of the lande, but if a tenaunt holde his lande by seruice to yeelde to his Lord yeerely at such a feast an horse, or an hauke, or such thing semblable, if in such case the Lord purchase parcell of the land, the seruice is gone, because that such seruice may not be seuered nor apportioned, but if a man holde his lande of another by homage, fealtie, and escuage and by certaine rent, if the Lorde purchase parcell of the land &c. In that the rent shalbe apportioned as is aforesaide, but yet in this case the homage and fealty abideth whole to the Lorde, for the Lorde shall haue the homage and fealtie of his tenaunt for the remenant of lands and tenementes holden of him as he had before &c. for this that such seruices be no annuell seruices, and may not bee apportioned. But the escuage may and shall be apportioned after the quantitie and rate of the land.

Also if a man haue a rent charg, and his father purchaseth parcell of the tenements charged in the fee, and dieth, and that parcel discendeth to his son that hath the rent charge now

this

this rent charge shalbe appoꝛcioned after the value of the land as is afoꝛesaid of ꝛet seruice, because that such a poꝛtion of the lande purchased by the father, commeth not to the sonne by his owne deed, but by discent and course of the law.

Also if there be Loꝛde and tenant, and the tenant holdeth of his Loꝛd by fealty and certein rent, and the Loꝛd graunteth the rent by his deede to another &c. reseruing to him the fealtie, and the tenant attourneth to the grauntee of the rent, now such rent is rent secke to the grantee foꝛ this that the tenements be not holden of the grauntee of the rent, but be holden of the Loꝛde that reserued to him fealtie, And in the same maner it is where a man holdeth his land by homage, fealty and certeine rent, if the Loꝛd grant the rent, sauing to him the homage, such rent after such grant is rent secke, but where lands oꝛ tenementes beene holden by homage fealtie, and certeine rent, if the Loꝛd will graunt the homage of his land by his deed to another, sauing to him the remnant of the seruices, and the tenant atturneth to him after the foꝛme of the graunt, now in this case ỹ tenant holdeth his land of the grãtee: and the Loꝛd that granteth the homage, shall not haue but the rent as rent secke, and shall neuer distrayne foꝛ the rent. Foꝛ this, that neither homage, noꝛ fealtie, noꝛ escuage may bee saide secke, foꝛ hee that hath oꝛ ought to haue of his tenant homage, oꝛ fealtie, and escuage

escuage, may of common right distraine for it if it be behind, for homage, fealty and escuage bin seruices by which lands and tenements be holden and been such that in maner may be taken but as seruices. But otherwise is of rent that was once rent seruice, for this, that when it is seuered &c. by the grant of the Lord from the other seruices, it may not be said rent seruice, for this that it hath not to it Fealty which is incident to euery manner of rent seruice, and for this it is said rent secke.

Also if a man let land to another for terme of life, reseruing to him certaine rent, if hee graunt the rent to an other sauing to him the reuersion of the land so letten by his deed &c. such rent is but rent secke, for this that the grauntee hath nothing in the reuersion of the land. But if he grant the reuersion of the land to another for terme of life, and the tenant attourneth &c. then hath the grauntee the rent as rent seruice, because he hath the reuersion for terme of life. And so it is to be vnderstood that if a man giue landes or tenementes in the tayle, reseruing to him and to his heires certaine rent, or let land for terme of life, reseruing certaine rent, if hee graunt the reuersion to another, and the tenaunt attourneth, all the rent and seruice passeth by the worde of the graunt of reuersion for this that all the rent and seruice in such case bee incidentes to the reuersion and passe by the grant of reuersion. But though hee graunt the rent to another

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the reuerſion paſſeth not by ſuch graunt &c. And ſo note well the diuerſity. And ſo it is holden Paſchæ 12.E.4.f.3. But it is adiudged An.26.lib.aſſ. pl.38.39. whereas the ſeruices of the tenant in tatle were graunted, that that was a good graunt, yet notwithſtanding the reuerſion remaines.

Alſo if there bee Lorde, meſne, and tenant, and the tenant holdeth of the meſne by the rēt of fiue ſhillings, and the meſne holdeth ouer by twelue pence, if the lord aboue purchaſe the tenancy in fee, then the ſeruice of the meſnalty is extinct, for this, that when the Lord aboue hath the tenancy hee holdeth of the Lord next aboue him. And if he ought to hold it of him that was meſne, then he ſhould holde one ſelfe Tenaunce immediately of diuers Lordes which ſhould bee inconuenient, and the lawe will ſooner ſuffer a miſchiefe then an inconuenience, and for this the ſeigniory of the meſnalty is extinct. But in ſo much that the tenaunt helde of the meſne by fiue ſhillings, and the meſne held but by twelue pence, ſo that hee had more aduantage by .iiij.s. then he payed to his Lord, he ſhal haue the ſaid foure ſhillings as rent ſeck yeerely of the Lord that purchaſeth the tenancy.

Alſo if a man that hath Rent ſecke, is once ſeyſed of any parcell of the rent, and after if the tenaunt will not pay the rent that is behinde, this is his remedie. It behoueth him to goe by himſelfe, or by another,

to

to the lands and tenements, whereof the rent is issuing, and there to demaund the arrerages of the rent, And if the tenant denie to pay it, this is denying is a disseisin of the rent. Also, if the tenant at the time be not ready to pay it, this is a denying and a disseisin. Also, if the tenaunt nor none other be dwelling vpon the lands or tenements when he asketh the arrerages &c. this is a denying in lawe, and a disseisin in deede, and of such disseisins hee may haue an action of Nouel disseisin against the tenaunt and recouer the seisin of the rent, and the arrerages, and his daunmages and costes of his writ and of his plee &c. And if after such recouery the rent be another time denied him, then hee shall haue a Redisseisin, and recouer double daunmages.

And it is to be had in mind, that this name Assise is Equiuocum, for sometime it is taken for a Jury, for in the beginning of the recorde of Assise of Nouel disseisin, the record shall begin thus, (Assisa venit recogñ) which is to say, that Iuratores veñ recogñ, and the cause is for this, that by the writ of Assise is commanded to the Shirife, Quod faciat xij. liberos & legales homines de vicineto &c. videre tentum illud, & nomina eorum imbreuiari, & quod summoñ eos per bonos summoñ quod sint coram Iustitiarijs &c. parati inde facere recognitionem &c. And for this, that by force of such an originall writte, a Panell by force of the same writ ought to be returned &c. It is

said

ſaid in the beginning of the Record in Aſſiſe, Aſſiſa venit recogñ &c. Alſo in a writ of right it is commonly ſayd, that the tenant may put him in God and in the great Aſſiſe &c. Alſo there is a writ in the Regiſter called, De magna Aſſiſa eligẽda, ſo is this a good proofe that this name Aſſiſe is ſometime put for the Jurie, and ſometime it is taken for all the writ of Aſſiſe, and after that intent it is moſt properly and moſt commonly taken, as Aſſiſe of Nouel diſſeiſin, is taken for all the writ of Aſſiſe of Nouel diſſeiſin. In the ſame maner Aſſiſe of commune of paſture, is taken for all the writ of aſſiſe of common of paſture, and aſſiſe of Mortdaunceſter, and aſſiſe of Daraine preſentment &c. But it ſeemeth that the cauſe why ſuch writs at the beginning were called Aſſiſes, is for this, that by euery ſuch writ it is commaunded to the Shirife, that hee ſummon xij. &c. which is as much to ſay, that hee ought to ſummon a Jurie &c. and ſometime Aſſiſe is taken for an ordinance, for to ſet certaine things in a certain rule and diſpoſition, as an ordinance that is entred in the auncient eſtatutes is called Aſſiſa panis & Seruitiæ.

Alſo if there be Lord & tenant, & the Lord graunteth the rent of his tenant by deed to an other, ſauing to him the other ſeruices, & the tenant attourneth, that is a rent ſecke, as it is aforeſaid: But if the rent bee denied him at the next day of payment, hee hath no remedie, for this, that he had not thereof any poſſeſſion.

But

But if the tenaunt when he attourneth to the grauntee, or after, will giue a penie, or a halfe penie to the grauntee in name of seisin of rent, then if after at the next day of paimẽt the rent be demed him, he shal haue an Assise of Nouel disseisin. And so it is, if a man graunt by his deed a yeerely rent issuing out of his land to another &c. if the grantor then after pay to the grauntee a penie, or an halfepeny, in the name of seisin of the rent, then if after the first day of paiment the rent be denyed, the grantee may haue an assise, or els not.

Also of rent seck a man may haue an assise of Mortdauncester, or a writ of Ayel or Cosinage, & all other maner of actions reals, as the cale lyeth, as he may haue of any other rent.

Also there be three causes of disseisin of rẽt seruice, that is to say: Rescous, Repleuin, and Enclosure. Rescous is, when the Lorde distraineth in the land holdẽ of him for his rent behind, if the distresse be rescued from him, or the Lord come vpon the lande, and would distrain, and the tenant or another man will not suffer him &c. Repleuin is, when the Lorde hath distrained, and repleuin is made of the distresse, by writ, or by plaint &c. Enclosure, is if the lands and tenements be so encloled, that the Lord may not come within the lande and tenements for to distrain. And the cause why such things so done bee disseisins made to the Lord, is for this that by such things the Lord is disturbed of the mean by which he ought to

haue come to his rent. And fower causes be of disseisin of rent charge: that is to say, rescous, repleuin, enclosure, and denier, for denying is a disseisin of rent charge, as it is aforesaid of rent seck. And two causes be of disseisin of rent seck: that is to say, enclosure, and denier. And yet it seemeth that there is another cause of disseisin of all the three rents aforesaid, that is when the Lord is going to the land holden of him for to distraine for the rent being behind, the tenant hearing this encountreth him, and forestalleth him the way with force & armes, and manasseth him in such forme, that he dare not come to the land to distraine for his rent behind &c. for doubt of death, or bodily hurte, this is a disseisin, for this, that the Lord is disturbed of þ meane whereby he ought to come to his rent. And so it is if by such forestalling and manassing, hee that hath rent charge or rent seck is forestalled, or dare not come to the land to aske the rent behind.

The third booke.

Parceners.

PArceners be in two manners: that is to say, Parceners after the course of the common Lawe, and Parceners after the custome. Parceners after the course of the common Lawe bee, where a man or woman is seised of certain lands or tenements in fee simple, or fee taile, and hath none issue but daughs

daughters and dieth & the tenements discend to the daughters and the daughters enter into the lands & tenements so to them discended then they be called parceners, and bee but one heire to their auncestor and they be called parceners for this, that by the writ that is called Breue de participatione facienda, the law will cõstraine them ỹ participation shalbe made among thẽ, & if there be ij. daughters to whom the land discendeth, then they be called 2. parceners, & if they be 3. daughters they be called 3. parceners, and 4. daughters 4. parceners, and so forth, and if a man seised of lands in fee simple or fee taile die without issu of his body, and the tenements discend to his sisters, they be parceners as is aforesaid. In the same maner it is, where he hath no sisters but the land discẽdeth to his aunts, they be parceners, but if a mã hath but one daughter she may not be said parcener, but daughter and heire. And it is to wit, that partition betweene parceners may be made in diuers manners, one is when they agree to make partition and make partition of the tenements, as if there bee 2. parceners to deuide betweene thẽ the tenement in 2. parts, euery part by himselfe in seueralty of euen value, and if there be 3. parceners to deuide the tenementes in 3. partes in seueralty. Another partition there is to choose by agreement between them & certain of their friends to make the partition betweene them of the lands and tenements in the fourme aforesaid.

And in such cases after such partitions the eldest daughter shal choose first one of the parts so deuided, which shee will haue for her part. And then the second daughter after her another part &c. if it so be that there be many sisters &c. If it be not that they be otherwise agreed betweene them, for it may be agreed betweene them that one of them shall haue such tenementes, and another such tenementes &c. without any such first election, and the part that the elder sister hath, is called in latine Enitia pars. But if the parceners agree that the elder sister shall make partition of the tenements in the forme aforesaid, & if shee do, then it is said that the elder sister shall choose ỳ last part after each of her other sisters. Another partition and allotting there is, as if there be iij. parceners, and after such partition made of the lands, euery part of the land is by it self written in a litle scrowle, & it is couered all in waxe in a maner of a little ball, so that no man may see the scrowle, then are the fower balles of waxe put in a Bonet to keepe in the hands of an indifferent man, & then the elder daughter first shall put her hand in the bonet whi h shall take a ball of waxe, & the scrowle within the same ball for her purparty, and then the second sister shall put her hand in the Bonet and shal take another, and so then the third sister the third ball &c. and in this case it behoueth eche of them to hold them to their chance and allotment.

Also

Also another partition there is, as if there bee fower parceners, and they will not agree that partition shall be made between them, the one of them may haue a writ de participatione faciendi against the other three sisters, or two may haue a writ of Participatione facienda against the other, or the three against the fourth at their election, and when iudgement shall be giuen vpon such a writ, the iudgement shal be such that partition shall be made betweene the parties, and the Shirife in his proper person shall goe to the landes and tenements &c. and there he by the othe of xij. true men of his bayliwike &c. shall make partition betweene the parties, the one part of the same lands shall be assigned to the plaintife, or to one of the plaintifes, and another part to another &c. not making mention in the iudgement of the eldest sister more then of the yongest, & of the partitiō that he hath thus done, he shall make notice to the Iustices &c. vnder his seale and the seales of the xij. &c. & so in this case may you see that the elder sister shall not haue the first election &c. but the shirife shall assigne the part that she shal haue &c. and it may be that the shirife will assigne the first part to the yoonger sister, and the last part to the elder. See last parte //

And note well partition by agreement betweene parceners may by the law be made among them as well by word without deed, as by deed. M: 3. E: 4. //

Also, if two meases discende to two par-

ceners, and the one mese is worth by yeere xx. s. and the other but x. s. by yeere, in this case partition may be made betweene them in such forme, that the one parcener shall haue the one mese, and the other parcener shall haue the other mese, and shee that shall haue the mese of xx. s. and her heires shall pay a yeerely rent of v. s. issuing out of the same mease to the other parcener and to her heires for euer, because that euery of them shall haue euen in value, and such partition made, is good enough, and the same parcener that shal haue the rent of v. s. and her heires may distraine for the rent of common right in the same mease of the value of xx. s. if the rent of v. s. be behind at any time in whose hands soeuer the same mease commeth, though there was neuer writing made of it betweene them. In the same maner it is of partition of all manner of landes and tenements &c. where such rent is reserued to one, or to diuers parceners vpon such partition &c. but such rent is not rent seruice, but rent charge, of common right had and reserued for egalty of the partition. And note well that none bee called parceners by the Common lawe, but women or the heires of women, and which come by landes and tenements by discent, for if sisters purchase lands or tenements, of this they be called Ioyntenauntes and not parceners. Also if two parceners of lande in fee simple make partition betweene them &c. and the parte of the one

valueth

valueth much more then the part of the other, if they were at the time of partition of ful age, that is to say, of 21. yeeres, then they alway shall abide and neuer be defeated: But if the tenements whereof partition is made, bee to them in fee taile, and the part that the one hath is much better in yerely value then the part of the other, howbeit that they bee excluded during their liues to defeate the partition, yet if the parcener that hath the lesser part in value hath issue and dieth, the issue may disagree to the partition, and enter, & occupy in common that other part that is allotted to her Aunt, and so the Aunt may enter and occupy in common the other part allotted to her sister, as if no partition thereof had bin made &c.

Also, if two parceners of tenements in fee take husbands, and they and their husbands make partition betweene them, if the part of the one be lesse in yerely value then the part of the other during the liues of the husbands the partition shalbe in his force and strength: yet after the death of the husband the wife y hath the lesse part may enter in her sisters part, as it is aforesaid, & defeat the partition: But if the partition so made betweene them were such, that euery part at the time of allotment were egall of yeerely value, then it may not after be defeated in such cases.

Also, if there be two parceners, & the yonger of them bee within the age of xxi. yeeres, & partition is made betweene them, so that the

part that is allotted to the yoonger, is lesse in value then the part of the other: In this case the yonger during the time of her nonage, and also when she cõmeth to full age of xxi. yeeres, may enter in the porcion to her sister allotted, &c. and defeat the partition: But such a parcener ought to take heed when shee commeth to full age, that she ne take to her owne vse, all the profites of the tenements to her allotted, for by that she agreeth to the partitio at such age, in which case the partition shall stand and abide in his force and strength &c. but peradventure the profits of the halfe shee may take, leauing the profites of the other halfe, to her sister &c. It is to wit, that when it is saide males and females be of full age, that shall be vnderstoode of the age of 21. yeeres: for if any feoffement or graunt, release, confirmation, obligation, or any other writing before any such age bee made by any of them &c. or that any within such age bee Baillife or Receiuer with any man &c. all serueth for nought & may be auoyded. Also a man before such age shall not be sworne in no Iurie, nor no inquisition.

Also if tenements be giuen to a man in the taile, which hath as much land in fee simple, and hath issue two daughters and dieth, and the daughters make partition between them, so that the lands in fee simple be allotted to ỹ yoonger daughter, in allowance of the tenements tayled, allotted to the elder daughter, if after such partition the yoonger daughter alie-

alieneth the lande in fee ſimple to an other in fee, and hath iſſue a ſonne or a daughter, and dieth, the iſſue may enter in the tenements tailed, and them hold in purparte with their Aunt, and this is for two cauſes: One is for that, that the iſſue may haue no remedy of the land alienedby his mother, for that the lande was to her in fee ſimple, and in ſo much as he is one of the heirs in the taile, & hath nothing recompenced of that, that to him belongeth of the tenements tailed, it is reaſon that he haue his purparty of the land in taile and namely when ſuch partition maketh no diſcontinuance of the taile, as ſhalbe ſaid hereafter in the chapter of Diſcontinuance. But the contrary is holden M.20.H.6.fol.13. that is to ſay, that they may not enter vpon the parcener that hath the land tailed, but is put to his ſuite by writ of Formedon. An other cauſe is, for that, that it ſhalbe counted the folly of ỹ elder ſiſter, that ſhee would agree to the partition, where ſhe might haue had halfe the lād in fee ſimple, & halfe of the tenemēts in the taile for purparty, and ſo to be ſure without dammage &c.

Alſo if a man ſeiſed in a plough land by iuſt title, diſſeiſeth an infant wīn age of an other plough land, & hath iſſue two daughters, and dieth ſeiſed of both thoſe plough lands, the enfant then being within age, & the daughters enter & make partition, & the one plough land is alloted for the purparty of the one, as percaſe to the yōger ſiſter in allowance of ỹ other plough

plough land which is allotted to the purparty of the other, so that after the infant entreth in the plough land of the which he was disseised vpon the possession of the parcener that hath the same plough land, then the same parcener may enter into the other plough land that her sister hath, and holdeth in parcenary with her: But if the yoonger sister alien the same plough land to another in fee simple before ℔ entrie of the enfant, and after the child entreth vpon the possession of the alienee, then she may not enter into the other plough land, for this, that by her alienation shee hath vterly dismissed her selfe to haue any part of the tenements as parcener: But if the yoonger sister before the entrie of the enfant make therof a lease for terme of yeeres, or for terme of life, or in fee tayle, sauing the reuersion to her, and after the childe entreth, there paraduenture it is otherwise, for this, that shee dismisseth not her selfe of all that, that was in her, but hath reserued to her the reuersion and the fee simple &c.

Also, if there bee three or fower parceners that make partition betweene them, if the part of the one parcener be defeated by such lawful entrie, shee may enter and occupie the other landes of all the other parceners, and compell them to make new partitiõ of the other lands betweene them &c.

Also, if there bee two parceners, and the one taketh an husband, and the husband and the

the wife haue issu betweene them, and the wife dieth, and the husband holdeth him in the hall as tenãt by the curtesie. In this case the parcener that survyueth, and the tenaunt by the curtesie may well make partition betweene thẽ &c. And if the tenant by curtesie will not agree to make partition, then the parcener that survyueth may haue a writ de participatione facienda &c. and compell him to make partitiõ. But if the tenãt by the curtesie will haue partition betweene them, & the parcener that survyueth will not haue it, then the tenant by the curtesie shal haue no remedy for to haue partition, for he may not haue a writ de participatione facienda, for this that he is not parcener, for such a writte lieth for parceners onely. And so may ye see that ỹ writ de participatione facienda lieth against tenãts by the curtesie, & yet himselfe may not haue such a writ.

Parceners by the custome.

PArceners by the custome bee where a man seised in fee taile of the lands or tenements that bee of the tenure called Gauelkind within the shire of Kent, & hath issue diuers sons and dyeth, such landes and tenements shall discende to all the sonnes by the custome, and they euenly shall inherite and make partition betweene them by the custome as females doe, and a writte de participatione facienda lyeth in this case as betweene females, but it

it behoueth in the declaration to make mention of the custome. Also such custome is in other places in Englād, and also such custome is in North wales.

Also there is an other partitiō that is of an other nature, and in an other fourme then any of the partitions aforesaide, as a man sesed of certaine landes in fee simple hath issue two daughters, and the elder is maried, and the father giueth parcell of the same landes to the husbande with his daughter in franke mariage, and dyeth seised of the remenaunt the which remnaunt is of more greater value by yeere then bee the lands giuen in franke mariage.

In this case the husbande and the wife shall haue nothing for their parte of the sayde remnaunt, but if they will put in their landes giuen in franke mariage in hotchpot with the remnaunt of the lande with her sister, and if they wil not do so, then the yoonger sister may occupie the same remnant, and take to her the profites onely, and it seemeth that this worde hotchpot is in English a pudding, for in such a pudding is commonly put not one onely thing, but one thinge with an other, and for this it behoueth in such case to put the landes giuen in Frankemariage with the other landes in hotchpot if the husband and the wife will haue any thing in the other remnant &c. This word hotchpot is but a terme of similitude, & is as much to say, as to put the

lands

lands giuen in frankmariage, & other lands in fee simple &c. togither, & this is to such entent to accompt the value of all the lands, that is to say, of the lands giue in frankmariage & the remnaunt that was not giuen, & then partition shall be made in this fourme that ensueth. As put case that a man is seised of xxx. acres of land in fee simple, euery acre in value xij. d. by the yeere which hath issu two daughters, and the one is couert baron, & the father giueth x. acres of the xxx. acres to the husband with his daughter in frankmariage and dieth seised of the remnant, then the other sister shal enter into the remnant, that is to say, in the xx. acres, and shall occupy it to her owne ble, except the husband and the wife will put their x. acres giuen to them in franke marriage with the other xx. acres in hotchpot, that is to say, togither, and then when the value is knowen of euery acre, that is to say, euery acre is yerely worth xij. d. then the partition shall be made in such forme, that is to say, that the husband & the wife shall haue aboue the x. acres giuen to them in frankmariage v. acres in seueralty of the xx acres, and the other sister shall haue the remnant, that is xv. acres of the xx. acres for her part, so that accompting the ten acres that the husband and the wife had in frankemariage, and the other fiue acres of the xx. acres, the husband and the wife haue asmuch in yeerely value as the other sister hath, and so alwayes vpon such partition the landes giuen

giuen in frankmariage, abide to the donors or to the heires &c. after the forme of the gift &c. For if ỹ other parcener should haue nothing of this that is giuen in frankmariage, of this should follow an incõuenience, and a thing against reason which the law will not suffer &c. and the cause why that lands giuen in frankmarriage shall be put in hotchpot is this, that when a man giueth landes and tenements in frankmariage with his daughter or with his other cosin, it is to be vnderstood by the lawe that such gift made by such wordes frankmariage is an aduancement of his daughter or of his cosin, and namely when the donour and his heires shall not haue any rent or seruice of him, except fealty vntill the fourth degree bee passed &c.

And for such cause the lawe is that she shall haue nothing of the other landes and tenementes discended to the other parceners &c. if shee will not put the tenementes giuen in frankmariage in hotchpot, as is aforesaid, & if she will not put the lands giuẽ in frankmariage in hotchpot, then she shall haue nothing in the remnant, for this that it shall be vnderstood by the lawe, that shee is sufficiently aduanced to which aduancement shee agreeth & holdeth her selfe contented.

The same Lawe is betweene the heires of the donees in frankemarriage and the parceners &c. if the donees in frankemarriage die before their auncesters, or before such partition

tition &c. as to put in Hotchpot &c.

And note well, that gifte in frankemarriage was by the common Lawe, before the Statute of Westminster the second, and alway after, so hath beene vsed and continued and so forth.

Also such putting in hotchpot &c. is where lands or tenements that were giuen in frankmarriage discend from the donor in frankmariage onely, for if the landes discend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor, or other auncestors, and not by the donor &c. there it is otherwise, for in such case shee to whome such gifte in frankmarriage is made, shall haue her parte as if no such gift in frankmarriage had beene made, for this, that she was not aduaunced by him &c. but by an other.

Also, if a man seised of xxx. acres of lande, euery acre of euen yerely value, hauing issue two daughters, as it is aforesaid, and giueth of this to the husband of the daughter xb. acres in frankemarriage, and dyeth seised of the other xb. acres, in this case that other sister shal haue the xb. acres so discended to her onely, and the husband and the wife shall not put in such case the xb. acres to him giuen in frankmarriage in hotchpot &c. for this that the tenements giuen to him in frankmarriage be of as good yerely value as the other lands discended &c.

For

For if the landes giuen in franke mariage were of as euen value as the remnaunt, or of more value, then in vaine and to none intent such landes giuen in franke mariage shall be put in hotchpot &c. for this that she may haue nothing of the other lands discended &c. For if she should haue any parcell of the other lãds discended, then should she haue more in yerely value then her sister &c. which the lawe will not &c. And as it is said in the cases aforesaid, of two daughters, or two parceners, in the same maner, and in like cases is, where there be moe sisters, after that as the case and the matters be &c. And it is to wit, that lands and tenements giuen in franke mariage, shall not be put in hotchpot, but with the lands discended in fee simple, for of lands discended in fee taile, partition shall be made as if no such gift in franke marriage had beene made. Also no lands shall be put in hotchpot with other, but lands that bee giuen in frank mariage onely. For if any womã haue any other lands or tenements by any other gift in the tayle, she shal neuer put such lands so giuen in hotchpot &c. but shee shall haue the part of the remnant, discended &c. that is as much as the other parcener shall haue of the same remnant.

Also another partition may bee made betweene parceners, that varieth from the partitions aforesaid: As if there bee three parceners, & the yongest would haue partition, and the other two would not, but will hold in par-

cena-

cenary that, that to them belongeth without partition: In this case if one part be allotted in seuerality to the yonger sister after that that she ought to haue, then the other may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good enough. And if after the elder & middle parcener will make partition between them of that that they held, they may well doe so when they please. But where partition shal be made by force of a writ de participatione facienda &c. there otherwise it is, for there it behoueth ỹ euery parcener haue his part in seuerality &c. More shalbe said of Parceners in the Chapiter of Iointenaunts, and also in the Chapiter of Tenants in common.

Iointenants.

IOintenants bee as a man seised of certaine lands or tenements &c. and thereof hath infeoffed, two, or three, or fower, or more, to haue and to hold to them and to their heires, or to haue and to holde to them for terme of their liues, or for terme of anothers life, by force of which feoffement they be seised, such be Iointenants.

Also if two or three disseise another of any landes or tenements to their owne vse, then the disseisours be Iointenants: But if they disseise another, to the vse of one of them, then be they no Iointenants, but he to whom the

vse of the disseisin is made, is sole tenant, and the other haue nothing in the tenancy, but bee called coadiutors to the disseisin &c.

¶ And note well, that disseisin is properly where a man entreth into any landes or tenements where his entre is not lawfull, & putteth him out that hath the franktenement &c. And it is to wit that the nature of iointenancy is, that he that suruiueth shall haue only the whole tenancy, after such estate as hee hath if the iointure be continued &c. As if three iointenants be in fee simple, & the one hath issue & dieth, yet they that suruiue shall haue the tenements whole, and the issue shal haue nothing, and if the second iointenãt haue issue and die, yet the third that suruiueth shal haue the tenements whole, and shal haue them in fee simple to him and to his heires. But otherwise it is of parceners, for if three parceners be, and before any partition the one hath issue and dieth, that that to her belongeth shall discend to her issue, and if such a parcener die without issue, then that that to her belongeth shal discend to her heires, so that they shall haue this by discent, and not by the suruiuor as Iointenants haue &c. And as the suruiuor holdeth place among Iointenants &c. in the same manner it holdeth place among them that haue ioint estate or possession with others of chattels real, or chattels personal. As if a lease of lands or tenemẽts be made to many for terme of yeres, he that suruiueth of the lessees shall haue the tene-

tenements whole to him during the terme by force of the same lease. And if any horse, or other chattell personal be giuen to many mo, he that suruiueth shall haue them to himselfe.

In the same maner it is of dets and duties &c. For if an Obligation be made to many for one duty, he y suruiueth shall haue all the det, and so it is of all other couenants & contracts.

Also some iointenãts may be that may haue ioint estates, and bee iointenants for terme of their liues, and yet they haue seuerall inheritances, as if lands be giuẽ to two men, and to the heires of their two bodies engendred: In this case the donees haue ioint estate for term of their two liues, and they haue seueral inheritance. For if the one of the donees haue issue and die, the other that suruiueth shall haue all by the suruiuor for terme of his life. And if he that suruiueth hath also issue and die, then the issue of the one shall haue the halfe of the land, and the issue of the other shall haue the other halfe of the land, & they shall hold the land betweene them in common, and be not iointenants, but tenants in common. And the cause that such donees in such cases haue Ioynte estate for terme of their liues, is this, for this that at the beginning landes were giuen to them two, which wordes without more saying, made a ioint estate to them for terme of their liues. For if a mã will let lãd to another by deede, or without deede, not making mention what estate hee hath, and of this maketh

liuery of seysin: In this case the lessee shall haue estate for terme of his life, and so in so much that the lands were giuen to them, they haue a ioint estat for term of their liues. And the cause why they haue seuerall inheritãce is this, in so much that they cannot by possibility haue an heire betweene them ingendred as a man and a woman may haue &c. then the law wil that their estate and their inheritance shal be such, as reason will after the forme & effect of the wordes of the gift, and that is to the heires that the one engendreth of his body by any of his wiues, and the heirs that the other ingendreth of his body by any of his wiues &c. So it behoueth by necessity of reason, that they shall haue seuerall inheritances. And in such case, if the issue of one of the donees after the death of the donees die, so that hee hath no issue aliue of his body ingendred, then the donour or his heirs may enter in the haife as in his reuersion, though the other of the donees hath issue aliue &c. And the cause is, for so much as the inheritance is seuered &c. the reuersion in the law is seuered &c. and the suruiuour of the issues of the other shall holde no place to haue the whole. And so as it is said of males in the same maner it is where land is giuen to two females, and to the heirs of their two bodies begotten.

Also if landes bee giuen to two females, and to the heirs of one of them, this is a good iointure, and the one hath a free hold, and the

other

other hath fee simple, & if she ẏ hath the fee die, she that hath the freehold shall haue the whole by the suruiuor for terme of life. In the same maner it is where tenements be giuē to two, & to the heires of the body of one of them engēdred, the one hath freehold, and the other fee taile. Also if two iointenaunts be seised of estate of fee simple, and the one granteth a rent charge by his deed to another out of that that to him belongeth &c. In this case during the life of the grantor, the rent charge is effectual. But after his decease the rent charge is void as to charge ẏ land, for that he ẏ hath the land by the suruiuor, shall hold all the land discharged. And the cause is for this, that he that suruiueth claimeth to haue the land by the suruiuour &c. and not by discent of his fellow &c. But otherwise it is of Parceners, for if there be two parceners of tenements in fee simple, and before any partition the one chargeth that that to him belongeth by his deed, with a rent charge &c. & dieth without issue, and that that to him belongeth, discendeth to the other parcener, In this case the other parcener shall hold the land charged &c. for this that he commeth to the halfe by discent as heire &c.

Also if there be two Iointenaunts in fee simple within one borough where the landes and tenements within the same borough bee deuisable by testament, if the one of the saide Iointenaunts deuise that, that to him belongeth by testament &c. and die, this deuise is

void. And the cause is this, that no deuise may take effect but after the death of the deuisor. And for this that by his death all the land incontinent commeth by the law to his fellow that surviueth, by the survivor, which neither claimeth nor hath any thing in the land by the deuise, but in his owne right by the survivor after the course of the Lawe &c. for this cause such deuise is void.

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise &c. Causa qua supra.

Also it is commonly said, that euery iointenant is seised of the land that he holdeth iointly &c. throughout & by al. And this is as much to say that he is seised by euery parcell, and by all &c. and this is true, for in euery parcel, & by each parcell, & by all the lands and tenements he is iointly seised with his fellowes &c.

And if two iointenants be seised of certaine lands in fee simple, and the one letteth that, that to him belongeth to a straunger for term of xl. yeeres and dyeth within the terme. In this case after his decease the lessee may enter and occupy the halfe to him letten during the terme &c. though the lessee neuer had possessiō of it in the life of ỹ lessor, by force of this lease &c. And the diuersity betweene the case of the grant of a rent charge and this case is this, for in the graunt of a rent charge by a iointenant the tenants abide alway as they were before, without that, that any hath any right to halfe

parcel

parcell of the tenements but himselfe, and the tenements abide in such plight as they were before the charge &c. But where a lease is made by a iointenaunt to another for terme of yeeres &c. incontinent by force of the lease the lessee hath right in the same land, that is to say of al that, that to his lesor belonged, & to haue that by force of the same lease during his term &c. and this is the diuersity &c.

Also iointenants if they wil may make partition between them, and the partition is good inough, but they shall not be compelled by the law to do it, but if they will make partition of their proper wil and agreement, the partition shal stand in his strength, 30.3.E.4. See St. 31. H. cap. 21. & 32. H. 8. ca. 32.

Also, if a ioint estate be made of land to the husband and the wife, and to a third person, in this case the husband and the wife haue not in the law in their right but the halfe &c. And the third person shal haue as much as the husband and the wife haue, that is to say, the other halfe &c. And the cause is, for that the husband and the wife be but one person in the law, & be in like case as if the estate be made to two iointenants, where each one hath by force of the iointure the one halfe, and the other the other halfe. In the same maner it is, where an estate is made to the husband and the wife, & to other two men in this case the husband and the wife haue not but the third part, and the other two men the other two partes &c. Causa

qua ſupra. More ſhal be ſaid of them touching Iointenancie, in the Chapiter of Tenants in Common.

Tenants in Common.

TEnaunts in Common bee they, that haue lands and tenements in fee ſimple, fee tail, or for terme of life &c. which haue ſuch landes and tenements by ſeuerall title, and not ioint title, & none of them knoweth that, that is ſeueral to him. But they ought by the law to occupy ſuch lands and tenements in common & vndeuided to take the profits in common. And becauſe that they come to ſuch lands and tenements by ſeueral titles, & not by one ſelfe ioint title, and their occupation & poſſeſſion ſhall be by the law among them in common, therefore they be called Tenants in Common: as if a man enfeoffe two Iointenants in fee, and one of them alieneth that that to him belongeth to another in fee, now the other iointenant and the alienee be tenants in commo, for this that they be ſeiſed in ſuch tenements by ſeuerall titles, for the alienee commeth to the halfe by the feffement of the one iointenant, & the other iointenant hath the other halfe by force of the firſt feoffement made to him and to his firſt fellow, and ſo they be in by ſeuerall titles, and by ſeuerall feoffements &c. And it is to wit, that when it is ſaide in any booke, that a man is ſeiſed in fee, without more ſaying it ſhalbe vn-

vnderstood fee simple, for it shal not be vnderstood by such word in fee, that a man is seised in fee taile, except that there be put therto such addition, that is to say, fee taile.

Also if three Jointenãts be, and the one of them alieneth that, that to him belõgeth to an other in fee: In this case the alienee is tenant in common with the other two Jointenants. But yet the other two Jointenants bee seised of the two partes iointly, and of those two partes the suruiuour betweene them holdeth place &c.

Also if there be two Jointenants in fee, & the one giueth that, that vnto him belongeth to another in the taile, the donee and the other iointenants be tenants in common &c. But if the landes bee giuen to two men, and to the heires of their two bodies ingendred, the donees haue ioint estate for terme of their liues, and if each of them haue issue and die, their issues shall hold in common &c. But if landes bee giuen to two Abbots, as to the Abbot of Westminster, and to the Abbot of Saint Albons, to haue and to hold to them and to their successors, in this case they haue in continent at the beginning estate in common, and not ioint estate: And the cause is for this, that euery Abbot, or other Soueraign of an house of Religion before that hee be made Abbot or Soueraigne, was but a dead man in the law. And when he is made Abbot, he is as a man personable in the lawe, all onely to purchase,

and

and to haue lands and tenements, and other things to the vse of his houle, & not to his own proper vse, as other lecular men may. And for this in the beginning of their purchase, they be tenants in common. And if the one of them die, the Abbot that suruiueth shall not haue all by the suruiuor, but the succeſsour of the Abbot that dieth shall holde the halfe in common with the abbot that suruiueth &c.

9 E.2. 45. Also if lands be giuen to an abbot and to a lecular man, to haue and to hold to them, that is to say, to the abbot and his succeſsours, & to the lecular man, to him and to his heires, they haue estate in common, Cauſa qua ſupra.

Also if lands be giuen to two men, to haue and to hold, the one halfe to the one and to his heires, and the other halfe to the other & to his heires, they be tenants in common &c.

Also if a man ſeiſed of certaine landes enfeoffeth another in the halfe of the same land, without any speech of aſſignement or limitation of the same halfe in ſeuerality at the time of the feoffement, then the feoffee and the feffor shal hold the parts of the land in cõmon. And in the same maner as is aforeſaid of tenaunts in common of lands or tenemẽts in fee ſimple or in fee taile, in the same maner may it be ſaid of tenants for terme of life. As if two Iointenants be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, & the other iointenant letteth that, that to him belongeth to another for terme of life, these two

leſſees

lessees be tenants in cõmon for terme of their liues &c.

Also if a man let lands to ij. men for terme of their liues, & the one granteth all his estate of that that vnto him belongeth to another &c. then the other tenant for terme of life, & hee to whom the grant is made be tenants in cõmon during the time that both lessees be aliue.

And it is to be remembred, that in all other such cases, though that they bee not here expressly named or specified, if they be in like reason, they be in like law.

Also if there be two iointenants in fee, and the one letteth that, that vnto him belongeth to another for terme of life, the tenãt for terme of life, during his life, and the other iointenant that did not let be tenants in cõmon. And vpon this case a question may rise as this: Put the case that the lessor hath issue and dieth, liuing the other iointenant his fellow, and liuing the tenaunt for terme of life, the question may be such, if the reuersion of the half &c. that the lessor hath, shall discend to the issue of the lessor, or that the other iointenant shall haue it by the suruiuor. And some haue said in this case, that the other iointenant shal haue the reuersion by the suruiuor, & their reason is such, when the iointenãts were iointly seised in fee simple &c. though the one of them made estate of that, that vnto him belongeth for terme of life, and though that hee hath seuered the franktenement of that, that to him belongeth

vp

by the leafe, yet hee hath not ſeuered the fee ſimple, but the fee ſimple abideth to him iointly as it was before. And ſo it ſeemeth vnto the that the other iointenant that ſuruiueth, ſhall haue the reuerſion by the ſuruiuour &c. And other haue ſaid the contrary, and this is their reaſon, when one of the Iointenaunts letteth this that to him belongeth to another for term of his life, that by ſuch leafe the frankftenement is ſeuered from the iointure. And by the ſame reaſon the reuerſion that is dependaunt vpon the ſame frankftenement, is ſeuered frō the iointure. Alſo if the leſſor had reſerued to him a yeerely rent vpon the leafe, the leſſour onely ſhould haue had the rent &c. The which is a proofe that the reuerſion is onely to him, and that the other hath nothing in the reuerſion &c. And if the Tenaunt for terme of life were impleaded &c. and made default after default, then the leſſour ſhall be onely of this receiued to defend his right, and his fellowe in this caſe in no manner ſhall bee receyued: which proueth that the reuerſion of the halfe is onely in the leſſour. And ſo by conſequence if the leſſour die, liuing the leſſee for terme of life, the reuerſion ſhall diſcend to the heires of the leſſour &c. and not come to the other Iointenaunt by the ſuruiuour, Ideo quære. But in this caſe if the iointenāt that hath the frankftenement haue iſſue and die, liuing the leſſour & the leſſee, then it ſeemeth that the iſſue ſhall haue the halfe in his demeſne as of fee

fee by diſcent, for this that the franktenement may not by nature of the iointure be annexed to a reuerſion. And it is certaine, that he that did not let was ſeiſed of the halfe in his demeine as of fee, and none ſhall haue any ioynture in his franktenement, Ergo this ſhall diſcend to his iſſue, Sed quære. But if it be thus that the law in this caſe is ſuch, that if the leſſor die liuing the leſſee, and liuing the other iointenant that hath the franktenement of the other halfe, that the reuerſion ſhall diſcend to the iſſue of the leſſor, then is the iointure and the title that any of them may haue by the ſurrender by right of the iointure, annulled and al vtterly defeated for euer.

In the ſame manner it is if the iointenant that hath the franktenemēt die, liuing the leſſor & the leſſee, if the law be ſuch that his frāktenement and fee that he hath in the halfe ſhal diſcend to his iſſue, then the iointure ſhall bee defeated for euer &c.

Alſo if three iointenants be, and the one releaſeth by his deed to one of his fellowes, all the right that he hath in the land, then hath he to whom the releaſe is made, the third part of the landes by force of the releas, and hee & his fellow ſhall hold the other 2. partes iointly. And as to the third part that he hath by force of the releaſe, hee holdeth the third part with himſelfe and his fellow in common.

And it is to wit, that ſometime a deede of releaſe ſhall take effect, and ſhall be in vſe to

put

put the estate of him that made the release, to him to whom the releas is made, as in the case aforesaid.

And also if a ioint estate bee made to the husband and his wife, and to a thirde person, and the third person releaseth his right that he hath &c. to the husband, then hath the husband the halfe that the third person had, and the wife of this hath nothing. And if in such case the third release &c. to the wyfe, not naming the husband in the release, then hath the wife the halfe that the third person had: and the husbande hath nothing of this, but in right of his wife, for this that in such case the release shall enure to put the estate to him to whom the release is made of all that, that belongeth to him that made the release. And in some case a release shall enure to put all the right that hee hath that made the release, to him to whom the release is made. As if a man seysed of certaine landes and tenements, is disseysed by two disseisors, if the disseisee by his deed release all his right &c. to one of the disseisours, then hee to whom the release is made, shall haue and holde all the tenements to him onely, and put his fellow out of euery occupation of it: and the cause is, for this, that the two disseisours were seised in the tenementes by wrong of them done against the Law. And when one by them hath the release of him that had right to enter &c. this right in such case resteth in him to whom the re-

releas is made, and in such plight, as if he that had the right had entred and enfeoffed him &c. And the cause is for this, that hee that before had an estate by wrong, that is to say, by disseysin, nowe by the release hath a rightfull estate.

And in some case a release shall enure by way of extinguishment, and in such case such release shall helpe the iointenant to whom the release is not made, aswell as to him to whom the release is made. As if a man be disseised, & the disseisor maketh a feoffement to two men in fee, if the disseisee release to one of the feffees in fee by his deed, then such release shall enure to both the feffees, for this, that the feffees haue estate by the lawe, that is to say, by the feoffement, & not by any wrong done to any other.

And in the same manner it is, if the disseisor make a release to a man for terme of lyfe, the remainder ouer to another in fee, if ỹ disseisee release to the tenaunt for terme of life, all his right &c. this release enureth aswell to him in the remainder, as to the tenãt for terme of life &c. And ỹ cause is for this, that the tenant for terme of life cõmeth to his estate by the course of the law, and for this the release shall enure & take effect by way of extinguishment of the right of him that hath released &c. And by this releas the tenãt for terme of life hath no greater estate then hee had before the release made vnto him, and the right of him that released is all vtterly extinct. And in so much that such re-

releaſe cannot inlarge the eſtate of the tenant for terme of life, it is reaſon that the releaſe ſhall enure to him in the remainder &c. More ſhall be ſaide of Releaſes, in the Chapter of Releaſes.

Alſo if there be two parceners, and the one alieneth that, that vnto him belongeth to an other, then the other parcener and the alienee be tenants in common.

Alſo tenants in common may be by title of preſcription, if the one and his auncеſtors, or they whoſe eſtate hee hath in the halfe, haue holden in common, the ſame halfe with the other tenant that hath the other halfe, and with his auncеſtors, of them whoſe eſtate hee hath as vndeuided, from time whereof no memory runneth. And diuers other matters may make and cauſe men to be tenants in common that be not here expreſſed.

Alſo in ſome caſe tenāts in common ought to haue of their poſſeſſion ſeueral actions, and in ſome caſes they ſhal ioine in one action. For if there be two tenaunts in common, and they be diſſeiſed, they ought to haue againſt the diſſeiſor two Aſſiſes, & not one Aſſiſe, for euerie of them ought to haue an Aſſiſe of his halfe &c. and the cauſe is for this, that tenaunts in common were ſeiſed by ſeuerall titles: But otherwiſe it is of Iointenants, for if there be xx. Iointenaunts, and they be diſſeiſed, they ſhall haue in all their names but one aſſiſe, becauſe that they had but one ioint title.

Alſo

Also if there be three Jointenants, and one releaseth to one of his fellowes all the right that he hath, and after the other two be disseised of the whole &c. in this case the other shall haue seuerall assises in this forme, that is to say, they shall haue in both their names one Assise of the two partes &c. for this that they held the two partes iointly at the time of the disseisin: And as to the third part, he to whom the release was made, ought to haue thereof an assise in his owne name, for this, that as to the third part hee is tenaunt in common &c. for this, that he came to the third part by force of the release, and not onely by force of the ioinure.

Also, as to sue actions that touch the realty, there is diuersity betweene parceners that be in by diuers discents, and tenants in common. For if a man seised of certaine lands in fee haue issue two daughters, and die, & they enter &c. and each of them hath issue a sonne & dyeth without partition made betweene them, by which the one halfe discendeth to the sonne of the one parcener, and the other halfe discendeth to the sonne of the other parcener, & they enter and occupy in common, and be disseised: in this case they shall haue in their two names one assise, and not two assises: and the cause is, that though they come in by diuers discents &c. yet they bee parceners, and a writte de particione facienda lyeth betweene them, and they bee not parceners hauing regard or re-

respect onely to the seisin and possession from their mothers, but they bee parceners having more respect to their estate that discēded from their graundfather to their mothers. For they may not bee parceners, where their mothers were not parceners before &c. And so to such respect and consideration, that is to wit, as to the first discent that was to their mothers, they haue a title in parcenarie, the which maketh them parceners. And also they be but as one heire to their common auncestor, that is to say, to their graundfather, from whom the land discended to their mothers: and for these causes before partitiō betweene them &c. they should haue one assise, though they come in by seuerall discents &c.

Also, if there be two tenants in common of certaine landes in fee, and they giue the same land to another man in the taile, or let it to an other man for terme of life, yeelding an annuitie, or certain rent, and a pound of Pepper, or an Hauke, or an Horse, and they been seised of these seruices, and after all the rent is behind, and they distraine for it, and the tenaunt maketh rescous: In that case as to the rent and the pound of Pepper, they shall haue two assises: and as to the Hauke and the Horse but one assise. And the cause why they haue two assises as to the rent and pound of Pepper is this, in so much that they were tenants in common by seuerall titles, and when they made a gift in the taile, or lease for terme

of

of life &c. sauing to them the reuersion, & yeelding to them certaine rent &c. Such reseruation is incident to their reuersion.

And for this that their reuersion is in common, and by seuerall titles, as their possession was before, the rent, and other thinges that may be seuered and were to them reserued vpon the gifte or vpon the lease, which bee incident by the law to the reuersion, such thinges so seuered were of the nature of the reuersion, which reuersion is to them in common by seuerall titles.

And it behoueth that the rent of the pound of Pepper which may be seuered bee to them in common by seuerall titles. And of this they shall haue two assises, and euery of them in his assise shal make his plaint of the halfe of the rent, and of the halfe of the pound of Pepper &c.

But of the Hauke & the Horse which cannot bee seuered, they shall haue but one assise, for a man may not make a plaint in assise of the halfe of an Hauke, or the halfe of an Horse &c. In the same maner it is of other rents and seruices that tenants in comon haue in grosse by diuers titles.

Also, as to actions personels, tenaunts in common ought to haue such actions personels ioyntly in all their names, that is to sate, of Trespasse, or of offences that touch their tenementes in common: as of breaking of their houses, breaking of their closes and

pastures, wasting & defouling of their grasse, cutting of their wood, & to fish in their ponds, and such other: In this case tenants in common shall haue one action iointly and recouer iointly damages, because that the action is in the personalty and not in the realty.

Also, if two tenaunts in common make a lease of their two tenementes to an other for terme of yeeres, yeelding vnto them yeerely a certaine rent, if the rent be behind &c. the tenants shall haue one action of det against the lessee, & not diuers actions, for that the action is in the personalty.

Also tenants in common may make partition betweene them if they will, though they shall not bee compelled by the Lawe. But if they make partition betweene them by their agreement and assent, such partition is good enough, as it is adiudged in the booke of Assises, P. 3. E. 4.

Also as there be tenãts in commõ of lands or tenements &c. as is aforesaid. In the same maner there be tenãts in common of chattels reall, and chattels personall. As if a lease be made of certaine lands to two men for terme of xx. yeeres, & when they be thereof possessed, the one of the lessees granteth that, that vnto him belongeth before, of the terme to another, then he to whom the graunt is made, and the other shall hold and occupie in common.

Also, if two iointenaunts haue the ward of the body and of the landes of a childe within age,

age, and the one of them graunteth to another that, that vnto him belõgeth of the same ward, then the grantee & the other that grãteth not, shall haue and hold it in common &c.

In the same maner it is of chattels personals, as if two haue a ioynt estate by gift or by buying of a Horse, or an Oxe &c. the one of them graunteth that, that to him belongeth of the same horse or oxe &c. Then the graūtee and he that graunteth not, shall haue & possesse such chattel personall in common &c. And in such cases where diuers persons haue chattels reals or personals in common, and by diuers titles, and one of them die, the other that suruiueth, shall not haue that by the suruiuor. But the executours of him that dyeth shall hold and occupie that with him that suruiueth, as their testatour did or ought in his life &c. for this that their titles and right in this case were seuerall.

Also, in this case aforesaid, if two haue estate in common for terme of yeeres, & the one occupy all and put the other out of his possession and occupation. Then shal he that is put out of occupation, haue against the other a writ de Eiectione firmæ for the halfe against the other. In the same maner it is where two holde the warde of landes or tenements during the nonage of a childe, if one put out the other of his possession, he that is out, shal haue a writ of Eiectment de garde of the halfe, for this that those things bee chattels reals,

and may be apportioned and seuered &c. But no such action of trespas, that is to say, Quare clausum suum fregit, & herbam suam conculcauit & consumpsit &c. And such like actions the one may not haue against the other, for this that each of them may enter and occupie in common &c. throughout and by all the tenements which they holde in common. But if two be possessed of chattels personals in common by diuers titles, as of an horse, or an oxe, or a cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedy but to take this of him that hath done to him the wrong for to occupy in common when he may see his time.

In the same maner it is of chattels reall that may not be seuered, as the case aforesaid: Two be possessioners of a ward of the body of a child within age, if one take the childe out of the possession of the other, the other hath no remedy by any action by the Law, but to take the child out of the others possession when hee seeth his time &c.

Also, when a man in pleading will shewe a deed of feoffement made vnto him, or a gift in the taile, or a lease for terme of life of any lāds or tenements, there hee shall say by force of which feoffement, gift, or lease, hee was seised &c. But where a man will plead a lease or grant made vnto him of a chattel reall or personel, there he shall say, by force of which hee was possessed.

More

More shall be said of Tenants in common in the Chapter of Releases, and Confirmations.

Estates vpon Condition.

ESTates that men haue in landes or tenements be in two maners: that is to say, they haue estate vpon condition in deed, or vpon condition in law. Vpon condition in deed, is as a man by deede indented infeoffeth an other in fee, reseruing to him and to hys heires yeerely a certaine rent, payable at one feast, or at diuers feasts by the yere, vpon condition, that if the rent bee behind &c. that it shal be lawful to the feoffour and to his heirs to enter into the landes or tenements &c. Or if the lād be alyened to an other in fee, to yeeld vnto him certaine rent &c. And if it hap that the rent bee behind by a weeke after any day of payment of it, or by a Moneth, or by a halfe-yere after any daie of payment, that then it shall bee lawfull to the feoffour and to his heires to enter &c. In this case, if the rent be not payed at such a day, or before such a time limitted and specifyed within the condition comprysed in the Indenture, then may the feoffour or hys heyres enter into such landes or tenements, and them in his first estate to haue and to holde, and of this to put the feoffee cleane out: And it is called Estate vpon condition, for this, that the

estate of the feoffee is defeasible, if the condition be not performed.

In the same manner it is if lands be giuen in the taile, or let for terme of life, or for terme of yeeres, vpon such condition &c. But where a feoffement is made of certaine lands, reseruing certain rent vpon such condition, that if the rent be behind, that it shalbe lawfull to the feoffor and his heires to enter, and the land to hold till they be satisfied or payed of their rent behind &c. In this case if the rent be behind, and the feoffor and his heires enter, the feoffee is not excluded cleane out, but the feoffor shall haue and hold the land, and take the profites till that he bee satisfied of the rent behind &c. And when hee is satisfied, the feoffee may reenter in the same land, and hold it as hee did before, for in such case the feoffor shall haue it but in maner for a distresse, in the meane time til he be satisfied of the rent &c. though he take the profits in the meane time.

Also, diuers wordes among other there be, that by vertue of them selfe make estate vpon condition: One is, this word of Condition, as A. enfeoffeth B. of certaine lande, to haue and to holde to the same B. and to his heires vpon Condition, that the same B. and his heires shall pay, or doe to be payed to the foresaid A. and to his heires yeerely such rent &c. In these cases without any more saying the feoffee hath estate vpon condition. Also if the condition were such: Prouided alway, that

the

the aforesaid B. paye, or doe to be paide to the aforesaid A. such rent: Or if they were thus, so that the aforesaid B. pay, or doe to be paied such rent. In these cases without any more saying, the feoffee hath estate but vpon condition, so that if hee performe not the condition, the feoffor and his heires may enter &c.

Also, other wordes there be in a deede that causeth the tenements to be conditionals, as vpon such a feoffement a rent is reserued to the feoffor &c. and after it is put in the deede, that if it chaunce the aforesaid rent to bee behinde in part or in all &c. that then it shall bee lawfull to the feoffor and to his heires to enter, and this is a deed vpon condition. But there is diuersity betweene the wordes (if it chaunce) &c. and the wordes next aforesaide, for this worde (if it chaunce) &c. is nought worth to such condition: But if it haue these wordes following, that is to say: that it shall be lawfull to the feoffour and to his heyres to enter &c. But in these cases aforesaid, it needeth not by the law to put such clause, that is to say, that the feoffor and his heires may enter &c. for this, that they may so doe by force of the wordes aforesaide, because they contayne in themselues in the Law a condition, that is to say: That the feoffor and his heires may enter. Yet it is common in all such cases aforesaid, to put such clauses in the deedes, that is to say: if the rent bee behind &c. that it shall bee lawfull to the same feoffour and his heires

heires to enter &c. And this is well done to that intent for to declare and expreſſe to the lay men that bee not learned in the Lawe, the maner and the condition of the feoffement &c. As a man ſeiſed of land as of franktenement, let the ſame land to an other by deede indented for terme of yeres, yeelding vnto him certaine rent, it is vſed to be put in the deed, that if the rent be behind at the day of payment, by a Moneth &c. that then it ſhall bee lawfull to the leſſour to diſtraine &c. and yet the leſſour may diſtraine of common right for the rent behind &c. though ſuch wordes neuer were ſet in the deed &c.

Tenant in Mortgage

Alſo, if a feoffement bee made vpon ſuch Condition, that if the feoffour pay at a certayne day &c. twenty pound of money, that then the feoffour may enter &c. In this caſe the feoffee is called tenant in Mortgage, that is as much to ſay in French, as Mortgage, and in Latin Mortuum vadium, and in Engliſh, a dead pledge. And it ſeemeth that the cauſe why it is called Mortgage, is that it ſtandeth in doubt if the feoffour will pay at the day limitted, ſuch a ſumme or not: And if he pay not, then the land that is put in pledge vpon condition for the payment of the money, is gone from him for euer, and ſo dead as to the tenant &c.

Alſo, as a man may make a feoffement in fee in Mortgage, ſo may a man make a gift of the tayle in Mortgage, and a leaſe for terme

of

of lyke, or for terme of yeeres in Mortgage. And all such tenants bee tenaunts in Mortgage after the state that they haue in the lands &c.

Also, if a Feoffement bee made in Mortgage, vpon condition that the feoffour shall pay such a summe at such a day &c. as is betweene them by their deede indented accorded and limitted, though the feoffour die before the day of payment &c. yet if the heire of the feoffour pay the summe within the day to the feoffee, or proffer him the money, and the feoffee refuseth to receiue it, then may the heire enter into the lands. And yet the condition is, if the feoffour pay such a summe at such a day &c. and not making mention in the condition of any payment to bee made by his heire, but for this that the heire hath interest of right in the condition &c. And the intent was but that the money should bee payed at such a day set &c. and the feoffee hath no more damage to be payed by the heire, then though he were payed by the father &c. for this cause if the heyre paye the money, or tenders the money at the day set &c. and the other refuseth it, hee may well enter. But if a straunger of his owne head that hath no interest &c. would tender and pay the money at the day set, then the feoffee is not bound to receyue it &c.

Also, it is to bee had in minde, that in such case where such lawfull tender of the money

Feoffees

is made, and the feoffee refuſeth to receiue it, wherefore the feoffor or his heires do enter &c. then the feoffee hath no remedy to haue the money by the common lawe, for this that it ſhall be coũted his owne folly that he refuſed the money when lawfull profer was made of it vnto him &c.

Alſo, if a feoffement be made with ſuch condition, that if the feoffee pay to the feoffour at ſuch a day betweene them limitted xx.li. that then the feoffee ſhall haue the land to him and to his heires, and if he faile to pay the money at the day &c. that then it ſhalbe lawfull to the feoffor or to his heires, to enter &c. And if after, before the day ſet, the feoffee ſelleth the land to another, and there of make a feoffement vnto him, in this caſe if the ſecond feffee will tender the ſumme of money at the day ſet to the feoffour, and the feoffour refuſeth it &c. then hath the ſecond feoffee eſtate in the land cleerely without condition. And the cauſe is, for that the ſecond feoffee had intereſt in the condition for ſaluation of his tenaunce. And in this caſe it ſeemeth that if the firſt feoffee after ſuch ſale of land will tender the money at the day ſet &c. to the feoffour, that ſhall bee good ynough for the ſaluation of the eſtate of the ſecond feoffee: for this, that the firſt feoffee was priuee to the condition, and ſo the tender of any of them is good ynough &c.

Alſo if the feffemẽt be made vpon conditiõ, that if the feffor pay a certain ſumme of mony

to

to the feoffee: that then it shalbe lawfull to the feoffor and to his heires to enter &c. In this case if the feoffor die before the day of paiment, and the heire will tender to the feoffee the money, such tender is voide: for this that the time within which the tender ought to bee made, is past. For when the condition is, that if the feoffor pay the money to the feoffee, this is as much to say, that if the feffor during his life pay the money to the feoffee &c. And when the feoffor dieth, then the time of the tender is past. But otherwise it is where day of payment is limitted, and the feoffor dyeth before the day, then may the heire tender the money, as is aforesaide, for this that the time of the tender was not past by the death of the feoffor. Also it seemeth in such case where the feoffor dyeth before the day of payment, if the executors of the feoffor tender the mony to the feoffee at the day of payment, the tender is good enough. And if the feoffee refuse this, ỹ heires of the feoffor may enter &c. And the cause is for this, that the executors represent the person of their testator &c.

And note well, that in all such cases of condition of paiment of certaine summe in grosse, touching lands or tenements, if lawfull tẽder be once refused, he that ought to pay the mony is therof quited & cleerely discharged for euer.

Also, if the feffee in mortgage before the day of paiment ỹ shalbe made vnto him make his executors & die, & his heire enter into the land as

as he ought. It seemeth in this case that the feoffor ought to pay the mony at the day set to the executors, and not to the heire of the feffee, for this, that the money at the beginning belonged to the feoffee in maner as a dutie. And it shal be vnderstood that the estate was made because of borowing of the money of ỹ feoffee, or because of another dutie, and for this the paiment shal not be made to the heire of the feoffee as it seemeth. But the words of the condition may be such, that the payment shall bee made vnto the heire, as if the condition were that ỹ feoffor pay to the feffee, or to his heires, such a summe at such a day &c. There after the death of the feoffee (if hee die before the day limitted) then the paiment ought to bee made to the heire at the day set &c.

Also in such case of a feoffement in Mortgage, a question hath bin demaunded in what place the feoffor is bound to tender the money to the feoffee at the day set &c. And some haue said, that vpō the land so holden in Mortgage for this that the condition is dependant vpon the land, and they haue said, that if the feoffor be ready vpon the lande to pay the money at the feast or day set, and the feffee be not at that time there, that then the feffor is excluded and discharged of paiment of the money, for this, that no default was in him: But it seemeth to some men that the law is contrary, and the default is in him: for hee is bound to seeke the feoffee if he be then at that time in any māner

of place within the Realme of England. As if a man be bound in an obligation of xx. pound vpon condition indorsed vpon the obligatiõ, that if he pay to him to whom the obligatiõ is made, at such a day ten pound, that then the Obligation of xx. li. shal loose his force, & shall be holden for nought: In this case it behoueth him that made the obligatiõ to seeke him to whom the obligation is made, if he be within England, and at the day set, to tender him the said x. pound &c. Or otherwise he forfaiteth the summe of xx. li. comprised within the obligation, and so it seemeth in the other case &c. And though that some haue said that the condition is dependant vpõ the land, yet this is not proued that the sesance of the condition to bee performed, ought to be made vpon the land &c. No more then if the condition were, that if the feoffor should do at such a day &c an especiall corporal seruice to the feoffee, not naming the place where the corporall seruice should be done: In this case the feoffor ought to do such corporall seruice at the day limitted to the feoffee, in whatsoeuer place in England that the feoffee bee, if he will haue aduantage of the condition &c. And so it seemeth in that other case. And it seemeth to them, that it shall be more properly said, that the estate of ỹ land is dependant vpon the condition &c. then to say, that the condition is dependant vpon the land. But inquire &c.

But if a feoffement in fee bee made reseruing

uing to the feoffor an annuell rent, and for de-
fault of paiment a reentrie &c. in this caſe it
needeth not to the tenaunt to tender the rent
when it is behinde, but onely vpon the land,
for this, that this is a rent going out of the
land, which is rent ſecke. For if the feoffor be
once ſeiſed of his rent, and after hee commeth
vpon the lande &c. and the rent is denied him
&c. he may haue an Aſſiſe de Nouel diſſeiſin, for
though hee may enter becauſe of the condition
broken, yet he may chuſe, that is to ſay, to en-
ter, or to haue an aſſiſe. And ſo is there diuer-
ſitie, as to the tender of the rent that is going
out of the land, & of tender of another ſumme
in groſſe, which is not going out of any land.
And therefore it ſhal be ſure and a good thing
for them that will make ſuch feoffement in
Mortgage, to put & ſet a ſpeciall place where
the monie ſhalbe paid. And the more ſpeciall
that it is put, the better it is for the feoffor.
As if A. enfeoffe B. to haue to him and to his
heires vpon ſuch condition, that if A. pay to
B. in the feaſt of Saint Michael the archan-
gell next comming, in the cathedrall Church
of S. Paul of London, within fower howers
next before the houre of noone of ỹ ſame feaſt,
at the roode loft of the North doore within ỹ
ſame church, or any other certaine place with-
in the ſame Church: that thē it ſhalbe lawfull
to the foreſaid A. and to his heires to enter &c.
In ſuch caſe he needeth not to ſeeke the feoffee
in any other place, but in the place compriſed

in

in the Indenture, nor to be there more longer time then the time specified in the same indenture, for to render or pay the mony to ỹ feoffee.

Also in such case where the place of paymēt is limitted, the feoffee is not bound to receyue the payment in none other place, but in the place so limitted. But yet if he receiue the paiment in any other place, that is good enough, and as strong for the feoffor, as if the resceyt had bin in the place so limitted &c.

Also in this case of feffement in Mortgage, if the feoffor pay the feeffee an Horse, or a cup of siluer, or a ring of golde, or any other such thing in full satisfaction of the money, and the other this receiueth, this is good enough, and as strong as if hee had receiued the summe of money, though the Horse, or any of the other thinges be not the twentieth parte worth in value of the summe of money, for this, that the other hath accepted it in plaine and full satisfaction.

Also if a man enfeoffe another in fee vpon condition, that he and his heires shall yeeld to a straunger and his heires a yeerely rent of xx.s. and if he and his heires faile of payment of this, that then it shall be lawful to the feffor and to his heires to enter, this is a good condition: And yet in this case, though such a yeerely rent be called an annuell rent, this is not properly a rēt, for if it shalbe rent it ought to bee rent seruice, rent charge, or rent secke, and it is none of them, for if the straunger

were ſeiſed of this, and after it were to him denied, he ſhall neuer haue an Aſſiſe of this, for this that it iſſueth not out of any lands, and ſo the ſtraunger hath no remedy, if any ſuch yeerely payment be behinde in this caſe, but that the feoffour and his heires may enter &c. and yet if the feoffour and his heires enter for default of payment, then ſuch rent is gone for euer. And ſo ſuch rent is but a paiment ſet to the tenaunt and to his heires, that if they will not pay this after the forme of the indenture, that they ſhall leeſe their land by the entrie of the feoffour or his heires for default of payment. And in this caſe it ſeemeth that the feeſee and his heires ought to ſeeke the ſträger & his heires if they be in England, becauſe that no place is limitted where the payment ſhalbe made, and becauſe that ſuch rent is not going out of any land &c.

And here note wel 2. things, one is that no rent that is properly ſaid rent, may be reſerued vpon any feoffement, gift, or leaſe, but onely to the feoffor or to the leſſour, or to their heires, & in no maner may be reſerued to any ſtrange perſon. But if two iointenaunts make a leaſe by deede indented, reſeruing to the one a certaine yeerely rent, that is good enough to him to whom the rent is reſerued, for this that hee is priuie to the leaſe and not a ſtraunger to this &c. The ſecond thing is, that no entre or reentre (which is all one) may be reſerued nor giuen to any perſon, but onely to the feoffour

or

or to the donour or the lessour, or to their heires, and such entre may not be alienen nor granted to any person. ¶ For if a man let land to another for terme of life by indenture, yelding to the lessor & to his heires certaine rent, & for default of paiment a reentre &c. if after ỹ lessor by a deed grant the reuersiõ of the land to another in fee, and the tenant for terme of life attorneth &c. if the rent after be behind, the grãtee of the reuersion may distraine for the rent, for this that ỹ rent is incident to the reuersiõ, but he may not enter into the land and put out the tenant as the lessour might, or his heires, if the reuersion had been cõtinued in them &c. And in this case the entre is taken away at all times, for the grauntee of the reuersion may not enter. Causa qua supra. See stat. 32. H. 8. c. 34. if the lease be by deede indented. And the lessour nor his heires may not enter, for if the lessour may enter, then he ought to bee in his first estate &c. & that may not be, for this that he hath put from him the reue sion &c.

Also if there be Lord & tenant, & the tenant make such a lease for terme of life, yeelding to the lessour and to his heirs, such yerely rent, & for default of paiment a reentre &c. if after the lessour die without heire, during the estate of the tenaunt for terme of lyfe, by which the reuersion commeth to the Lorde by way of Escheate, and after the rent of the tenãt for terme of life is behinde, the Lorde may distraine the tenaunt for the rent behinde, but hee may not

enter into the land by force of the conditiõ &c. for this that he is not heire to the feffor &c.

Also if land be grãted to a man for terme of yeres vpon condition, ỹ if he pay to the grantor within ỹ. yeres xl. markes, that then he shal haue the land to him and to his heires &c. In this case if ỹ grãtee enter by force of the grãt, and after he payeth to the grantor xl. markes within the ỹ. yeres, yet he hath nothing in the land, but for terme of two yeeres, for this that no liuery of seisin was to him made at the beginning, for if he had had franktenement and fee in this case, because he hath performed the condition, then should he haue franktenement by force of the first graunt where no liuery of seisin was made thereof, which should bee against reason &c. But if the grãtor had made liuery of seisin to the grauntee by force of the graunt, then hath the grauntee the franktenement, and the fee vpon the performance of the same condition.

Also, if lands be granted to a man for term of fiue yeres, vpon condition that he pay to the grauntor within the first ỹ. yeeres xl. markes, that then he shall haue fee, or els but for terme of v. yeres, & liuery of seisin is made to him by force of the graunt. Now he hath a fee simple conditionel &c. and if in this case the grauntee pay not to the grauntor thẽ xl. markes within the same ỹ. first yeeres, then immediatly after the same ỹ. yeeres the fee & the franktenement is and shalbe adiudged to the grãtor, for this

that

that the graunto̲r may not after the two yeres incontinent enter vpon the grauntee, fo̲r this that the grauntee hath yet title by three yeres to haue and occupie the land by fo̲rce of the ſame graunt. And ſo fo̲r this, that the condition on part of the grantee is b̲roken, and the graunto̲r may not enter, the Law ſhall put the fee and franktenement in the graunto̲r: Fo̲r if the grauntee in thes caſe make waſt, then after the b̲reaking of the condition &c. and after the two yeres the graunto̲r ſhall haue his writ of waſt, and this is a good p̲roofe that the reuerſion is to him &c. But in ſuch caſe of feoffements vpon condition where the feoffour may enter lawfully fo̲r the condition b̲roken &c. There the feoffour hath the franktenement befo̲re the entre &c.

Alſo, if a feoffement bee made vpon ſuch condition, that the feoffee ſhall giue the land to the feoffour, and to the wife of the feoffour, to haue and to hold to them and to the heires of their two bodies engend̲red, and fo̲r default of ſuch iſſue, to remaine to the right heires of the feoffour. In this caſe if the husbande dye lyuing the wife, befo̲re eſtate in the tayle made to him, then ought the feoffee by the law to make eſtate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to ſay, to let the lād to the wife fo̲r terme of life without impeachment of the waſt, the remainder after her deceaſe to the heires engēd̲red of the body of her

husband & hers, & for default of such issue, the remainder to the right heires of the husband.

And the cause why the lease shalbe made in this case to the woman sole without impechment of wast, is for this, that the condition is, that the estate shalbe made to the husband and his wife in tayle. And if such estate had beene made in the life of the husband, then after the death of her husband shee hath estate in the tayle sole, which estate is without impechmēt of wast, and so it is reason, that if after a man may make estate to the intent of the condition &c. that he shal make it &c. though that she cannot haue estate in the tatle as shee might haue had, if the gift in the tatle had been made to the husband & to her in the life of her husband &c.

Also in this case if the husband and the wife haue issue and die before the gift in the tayle made vnto them &c. then ought the feoffee to make estate to the issue, and to the heirs of the father and mother engendred, and for default of such issue &c. the remaynder to the right heires of the husband &c. And the same lawe is in other cases semblable: And if such a feoffour will not make such estate when he is reasonably required by them that ought to haue estate by force of the condition &c. then may the feoffour and his heires enter &c.

Also, if a feoffement be made vpon condition, that the feoffee shall enfeoffe many men, to haue and to hold, to them and to their heires for euer, and all they that ought to

haue

haue estate, die before any estate made vnto them, then ought the feoffee to make the estate to the heires of him that surviueth of them, to haue and to hold to him, and to the heires of him that survived &c.

Also, if a feoffement be made vpon conditiō to enfeoffe another, or to giue in the taile to an other &c. if the feoffee before the performing of the cōdition enfeoffe a strange person, or make a leas for terme of life, then may the feoffour and his heires enter &c. for this, that hee hath disabled himselfe to performe the condition, insomuch that hee made estate to another &c. In such maner it is, if the feffee before the cōdition performed, let thr same land to a stranger for terme of yeres: In this case the feoffor or his heires may enter &c. for this that the feoffee hath disabled himselfe to make estate of the tenements according to that, that was in the tenementes when the estate thereof was made vnto him, for if hee will make estate according to the condition &c. then may the feffee for term of yeres enter & put out him to whom the estate is made &c. and to occupy this during his terme. And many haue said, that if such a feffemēt be made to a man sole vpon the same condition, and before that hee hath performed the condition he taketh a wife, thē the feoffor or his heire may incontinent enter, for this that if he haue made estate according to the condition, & after dieth, his wife shalbe endowed, & may recouer her dowrie by a writ of

Dower &c. And ſo by taking of a wife, the tenements be put in other plite then they were at the time of the feoffement vpon condition, for this, that no ſuch woman was dowable, nor ſhould be endowed by the law &c.

In the ſame maner it is, if the feffor charge the land by his deed of a rent charge before the performing of the condition, or be bound in a ſtatute Staple, or ſtatute Marchant, that in ſuch caſes, the feoffor & his heires may enter, Cauſa qua ſupra. For whoſoeuer commeth to the tenements by the feoffement of the feoffee, then the tenements muſt be lyable, and be put in execution by force of the ſtatute aforeſaid. But when the feoffor or his heires, for the cauſes aforſaid haue entred ſo as they ought, as it ſeemeth &c. Then al ſuch things that before ſuch entre may trouble or incumber the tenements ſo giuen vpon condition, as touching the ſame tenement be vtterly defeated &c.

Alſo, if a man make a deede of feoffement to an other, & in the deed is no condition &c. And when the feoffor wil make to him liuery of ſeiſin by force of the ſame deed, he maketh liuery of ſeiſin vpon certaine conditions &c. In this caſe nothing of the tenements paſſeth by the deed, for this, that the cõdition is not compriſed in the deed, & the feffement is of ſuch force as if no ſuch deed had been thereof made &c.

Alſo if a feffement be made vpõ ſuch condition, that the feoffee ſhall not alien the land to any man, this condition is void, for this, that when

when a man is infeoffed in landes or tenements, hee hath power to alyen them to ſome perſon by the law. For if ſuch cõdition ſhould be good, then the condition putteth him out of all the power that the Lawe giueth, which ſhould bee againſt reaſon, and for this ſuch condition is voide. But if the condition bee ſuch, that the feoffee ſhal not alien to one ſuch, naming his name, or to any of his heires, or his iſſues &c. or ſuch other like, the which condition taketh not away all the power of alienation of the feoffee &c. then ſuch condition is good.

Alſo, if tenements bee giuen in the tayle vpon ſuch condition, that the tenaunt in the tayle, nor his heires &c. ſhall not alien in fee, nor in taile, nor for terme of an others life, but for their owne iſſues &c. ſuch alienation and condition is good: And the cauſe is for this, that when he maketh ſuch alienation and diſcontinuance, hee doth contrarie to the intent, for which the Statute of Weſtminſter the ſecond was made, by which eſtatute, the eſtates in the tayle be ordeyned, for it is proued by the words compriſed in the ſame eſtatute, that the intẽt of the making of the ſame eſtatute was, that the will of the donor in ſuch caſes ſhould be obſerued. And when tenant in the taile maketh ſuch diſcontinuance, he doth the contrary to that &c. And alſo in eſtates in the taile of any tenements when the reuerſion of the fee ſimple is in another perſon, when ſuch diſcontinuance

tinuance is made, then the fee ſimple in the reuerſion, or the fee ſimple in the remainder is diſcontinued, and for that that the tenant in ỹ taile ſhall do no ſuch thing againſt right, ſuch conditions are good, as is aforeſaid &c.

Alſo a man may giue land in the taile vpon ſuch condition, that if the tenant in the taile or his heires alien in fee, or in tayle, or for terme of an others life &c. And alſo, that if all the iſſues comming of the tenãt in the taile be dead without iſſue, that then it ſhalbe lawfull to the donor and to his heires to enter &c. & by ſuch way the right of the taile may be ſaued after ſuch diſcontinuance to the iſſue in the taile if there be any, ſo that by way of entre of the donor or of his heires, the taile ſhal not be defeated by ſuch condition, and yet if the tenant in the taile in this caſe, or his heires make any diſcontinuance &c. hee in the reuerſion or his heires after this that the taile is determined for default of iſſue &c. may enter into the lande by force of ỹ ſame condition, & ſhall not be driuen ta ſue a writ of Formdon in the reuerſion.

Alſo, a man may not plead in an action that eſtate was made in fee, in the taile, or for term of life vpon condition, but if he vouch a record therof, or ſhew a writing vnder ſeale, prouing the ſame condition, for it is a common erudition and learning, that a mã by pleading ſhall not defeat any eſtate of franktenemẽt by force of any ſuch cõdition, vnles he ſhew the proofe of ſuch condition in writing &c. except it be in

ſome

some especiall case, but of chattels reals, as of a lease made for terme of yeres, or of grants of wardes made by wardens in chiualry, and of such other &c. A man may plead that such gifts or graunts were made vpon condition &c. without shewing of any writing of condition. And in the same maner a man may do of giftes and graunts of chattels personels, and of contracts personels &c.

Also, though that a man in some action may not plead an action that toucheth and concerneth franktenement without shewing of writing thereof, as it is aforesaid, yet a man may be holpen vpon such condition by the verdict of xij. men taken at large in Assise of disseisin, or in some other action where the Justices will take the verdict of the twelue Iurours at large. As put the case that a man seised of certaine land in fee, letteth the same land for terme of life without deede, vpon condition to yeeld to the lessour a certaine rent, and for default of payment a reentre &c. by force of which the lessee is seysed as of a franktenement, and after the rent is behinde, by which the lessour entreth into the land, and after the lessee arraigneth an Assise of Nouel disseisin of the land against the lessor, the which pleadeth that he doth no wrong, ne no disseisin, and vpon this the Assise is taken.

In this case the recognitors of the Assise may say & yeeld to the Justices their verdict at large vpon all the matter, as to say that the de-

defendaunt was seised, and so seised, let the same land to the plaintife for terme of his life, to yeld to the lessor such annuel rent patable at such a feast, & vpon such condition, that if the rent be behind at any such feast, that it ought to be paied, that thē it shalbe lawfull to ỹ lessor to enter &c. by force of which lease the plaintife was seised in his demesne as of franktenemēt, & after the rent was behind at such a feast in such a yere &c. for which the lessor entred into the land vpon the possession of the lessee, & praieth the discretion of the Justices, if this be a disseisin done by the plaintife or not. And then for this that it appeareth to the Justices, that this was no disseisin done to the plaintif, insomuch that, that ỹ entre of the lessor was lawfull vpon him, the Justices ought to giue iudgement that the plaintif shal take nothing by his writ of Assise. And so in such case the lessor shalbe holpē, & yet no writing was euer made of the cōdition, for aswel as the Iurors may haue knowledge of the lease, in the same maner may they haue knowledg of the condition rehearsed in the lease. In the same maner is it of a feoffement in fee, or a gift in the taile vpon condition, though neuer writing were made therof &c. And as it is said of a verdict at large in Assise, in ỹ same maner it is of a writ of Entre founded vpon disseisin, & in all other actions where the Justices wil take a verdict at large, there where the verdict at large is made, the nature of ỹ matter is put in the issue,

Also

Also in such case where the enquest may say their verdict at large, if they wil take vpon thē the knowledge of the Lawe vpon the matter, they may say their verdict general, as it is put in their charge, as in the case aforesaid, they may well say that the lessor disseised not the lessee if they will &c.

Also in the same case if the case were such that after this that the lessor had entred for default of paiment &c. that the lessee had entred vpon the lessor and him disseised. In this case if the lessor arraigneth an assise against the lessee, the lessee may barre him of his assise, for he may plede against him in barre, how the lessor that is plaintife made a lease to the defendant for terme of life, saving the reuersion to the plaintife, the which is a good plee in barre, in so much that he knowledgeth the reuersion to be to the plaintife, and in this case he hath no matter to helpe him, but the condition made vpon the lease, and that he may not plede, for that hee hath no writing, and insomuch that he may not aunswere to the barre, he shall bee barred. And so in this case yee may see, that a man is seised, and he shal haue assise, and yet if the lessee be plaintife, and the lessor defendant he shall barre the lessee by verdict of the assise. But in this case where the lessee is defendant, if he will not plead the said plee in barre, but plede no wrong ne disseisin, then the lessor shal recouer by assise, Causa qua supra.

Also because such conditions bee most commonly

monly put & specified in deeds indented, some little thing shalbe said here (to thee my sonne) of indentures, & of a deed Poll conteining cõditions. And it is to wit, that if ỹ indenture be bipertite or tripartite, or quadripartite, all the parts of the indenture be but one deede in the law, and euery part of the Indẽture is of him selfe of as great force and effect, as al the parts togither. And the making of Indentures is in two maners. One is to make them in the third person, another maner is to make thẽ in the first person. The making of the th. person is as in such forme This Indẽture made between A. of B. of the one part, & C. of D. of ỹ other part, witnesseth, ỹ the foresaid A. of B. hath giuen & granted, and by this present deed indẽted, hath cõfirmed to the foresaid C. of D. such land, to haue &c. vpon ỹ condition &c. In witnes whereof the parties beforesaid interchãgeably haue put to their seales: or els thus In witnes whereof to the one part of this indẽture remaining w̃ the said C. of D. the foresaid A. of B. hath put to his seal, & to the other part of the said indenture remaining with the said A. of B. the said C. of D. hath put to his seale giuẽ &c. Such indentures are called indentures made in the third person, for this ỹ the verbes be in the third person, & such forme of indenture is the more sure making, for that it is more commonly vsed. The making of indentures in the first person is of such fourme:

To al true Christian people to whom this pre-

present writing indented shall come, A. of B. greeting in our lord euerlasting. Know ye me to haue giuen and grãted, and by this my present deed indented to haue confirmed to C. of D. such land &c. Or els thus: know all men ỹ be present, and them that be to come, that I A. of B. haue giuen and granted, and by this my present deed indented haue confirmed to C. of D. such land &c. to haue &c. vpon the condition following: In witnes whereof aswell I the said A. of B. as the foresaid C. of D. to these Indentures interchangeably haue put to our seales: or els thus. In witnes whereof to one part of this indenture I haue put to my seale, and to the other part of the same indenture the foresaid C. of D. hath put to his seale &c.

And it seemeth that such an indenture made in the first person, is as good in the law as the indenture made in the third person, whē both parties haue thereto put their seals, for in the Indenture made in the third person or in the first person, if mention be made that the grantour hath set his seale onely, and not the grantee, then is the indenture onely the deed of the grauntor. But where mention is made that the grauntee hath set his seale to the Indenture &c. then is the indenture as well the deed of the grantor, as the deed of the grantee, and thus it is the deed of both, and also euery part of the indenture is the deede of both parties in such case &c.

Also if estate bee made by Indenture to a

man

man for terme of his life, the remainder to an other in fee vpon Condition &c. and if the tenaunt for terme of life hath set his seale to one part of the Indenture, and after dieth, and he in the remainder &c. entreth by force of his remainder, in this case he is holden to performe all the conditions comprised within the Indenture, as the tenaunt for terme of life ought to doe in his life, and yet hee in the remainder neuer sealed any part of the Indenture: But the cause is, that insomuch that hee entreth and agreeth to haue the lād by force of the indenture, he is holden to perfourme the condition within the Indenture, if he will haue the land &c.

Also if a feoffement be made by deede Poll vpon condition &c. And for this that the condition is not perfourmed, the feoffor entreth and happeth the possession of the deede Poll, if the lessee bring an action of that entrie against the feoffour, it hath beene a question, if the lessour may pleade the condition &c. by the deede Poll against the feoffee: And some haue said nay, insomuch that it seemeth vnto them, that a deed Poll, and the property of the same deed appertaineth to him to whom the deede is made, and not to him that made the deede, and insomuch that such a deede appertayneth not to the feoffor, it seemeth to them that hee may not plead this deede &c. And other haue said the contrary, and haue shewed diuers causes. One is, if the case bee such, that in the action be-

betweene them the feffee plead the same deed, and shew this to the Court: In this case in so much that the deed is in the court, the feoffor may shew to the court, how in the deed be diuers conditions to be performed of the part of ꝑ feffee, & for this that they be not performed, he entred &c. & there to he shalbe receiued: by the same reason whē the feoffor hath the deed in hād, & sheweth it to the court, he shalbe well receiued to plead of this &c. And namely whē the feoffor is priuie to the deed, for he ought to be priuie to the deed when he made the deed.

Also if two men make or do a trespas to an other, the which releaseth to one of them by his deed all actions personels &c. Notwithstanding hee sueth an action of Trespasse against the other, the defendant may well shew that the trespas was done by him & an other his fellow, and that the plaintife by the deede that he shewed forth releaseth to his fellow, al actions personels, and yet such deed appertaineth to his fellow, and not vnto him, but for this that he may haue aduantage by the deed, if he will shewe the deed to the Court, he may well plead &c. Therefore by the same reason in the other case, when the feoffor ought to haue aduantage by the condition comprised within the deed Doll.

Also, if the feoffee gaue or granted the deed Doll to the feoffor, such grāt shalbe good, and then the deed, and the property of the deede appertaineth to the feoffour. And when the

feoffor hath the deed in hand, and pleadeth it to the court, it shall be rather vnderstood that he came to the deede by a lawfull meane then by a torcious meane. And so it seemeth ỹ they may wel plead such a deed Poll, that comprehẽdeth cõdition &c. if he haue the deed in hand &c. Ideo semper quære de dubijs, quia per rationes peruenitur ad legit rationem.

Estates that men haue vpon condition in the lawe, be such estates that haue condition in the lawe annexed to them, though it be not specified in writting, so as a man graunt by his deed to another the office of a Parkership of a Parke, to haue and to occupy the same office for terme of his life, the estate that he hath in the office, is vpon condition in the lawe, that is to say, that the Parker well and truly shall keepe the Parke, & do that, that to the office appertaineth to doe: or otherwise, that it shall be lawfull to the grantor and to his heires to put him out, and to graunt that to another if he wil &c. And such cõdition as is vnderstood by the law to be annexed to some thing, is as strong as if the condition were set or put in writting. In the same maner it is of graunts of offices of Stewards, Cõstables, Bedels, Bailifes, and other officers. But if such office be granted to a man to haue and to occupy by him or by his deputy, then if the office be occupied by him or by his deputy as it ought by ỹ law to bee occupied, this sufficeth for him, or els the grantor or his heires may put him out

as

as is aforesaid.

Also, estates of lands or tenements may be vpon condition in the Law, though that vpon the estate made, there was no rehersal made of the condition. As put the case that a lease bee made to the husband and his wife, to haue & to hold to thē during ꝯ couerture betweene thē, in this case they haue estate for terme of their two liues vpon condition in the law, that is to say, if one of them die, or if diuorce be made between them, that then it shall be lawfull to the lessor & his heires to enter &c. & that they haue estate for terme of their two liues, it is proued thus: Euery man that hath estate or frankte-nemēt in any lāds or tenemēts, either he hath estate in fee, or in fee taile, or for terme of life, or for terme of anothers life, and yet by such lease they haue frankstenemēt, but they haue not by the graunt, fee, nor taile, nor for terme of anothers life, Ergo they haue estate for terme of their two liues, but this is vpon condition in the law in forme aforesaid. And in this case if they make waste, ꝯ lessor shall haue against thē a writ of waste, supposing by his writ, Quod tenēt ad terminū vitæ &c. but in his plee, he shall declare how and in what maner the lease was made. In ꝯ same maner it is, if an abbot make a leas to a mā, to haue & to hold during ꝯ time that the lessor is abbot: In this case the lessee hath estate for term of his own life, but this is vpō cōdition in law, ꝯ is to say, that if the Abbot die, or resign, or be deposed, it shalbe lawful

to his ſucceſſors to enter &c.

Alſo, a man may ſee in the booke of Aſſiſes, An. 38. E. 3. a plee of aſſiſe in this forme that enſueth. Aſſiſe of Nouel diſſeiſin was ſometime brought againſt one A that pleadeth to the aſſiſe, & was found by verdict that the auncestor of the plaintife deuiſed the tenemẽts to be ſold by ỹ defendant that was his executor to make diſtribution of the money for his ſoule: And it was found, that a mã after the death of the teſtator tendred him a certaine ſumme of money for the tenements, but not to the value, & that the executor after helde the tenements in his owne hand by two yeere, to the intent to haue ſold the tenements more dearer to some other: And it was found that he had all the while after taken the profites of the tenements to his own vſe, without any thing doing for ỹ ſoule of the dead. ¶ Mombray, the executor in ſuch caſe is holden by the law to make ſuch ſale as ſoone as he may after the death of the teſtator, and it is found that he refuſed to make the ſale, & ſo the default was in him: And alſo by force of the deuiſe he was holden to haue put all the profits of the ſaid tenements to the vſe of the dead, and it is found that he hath taken them to his owne vſe, and ſo another default is in him, wherefore it was aiudged that the plaintife ſhould recouer &c. And ſo it appeareth in ỹ ſaid iudgemẽt that by force of the ſaid deuiſe the executor had none eſtate or power in the tenements, but vpon condition in the law &c.

And

And in such cases it needeth not to haue shewed any deed, rehersing the conditions &c. Ex paucis dictis intendere plurima possis. More shalbe said of cõditions in the chapter of Discents that take away entre, & in the chapter of Releases, & in the chapter of Discontinuance.

Discents.

DIscents that take away entres be in .ij. maners: that is to say, where the discent is in fee or in fee taile. Discẽt in fee that taketh away entre is, if a man seised of certein lands or tenements, is disseised, & the disseisor hath issue and dieth of such estate seised: Now the tenements discend to the issue of the disseisor by course of the law as heire vnto him.

And for this that the law purteth the lands or tenements vpon the issue, and the issue commeth to the tenements by course of the Law, and not of his owne deed, the entre of the disseisee is taken away, and is there of put to his writ of Entre vpon Disseisin against the heire of the disseisor to recouer the land.

Discent in the tayle that taketh away entre is, if a man be disseised, and the disseisor giueth the same land to an other in the tayle, and the tenaunt in the taile hath issue and dieth seysed of such estate, and the issue entreth, in this case the entre of the disseisee is taken away, and hee is put to sue against the issue of the tenant in the taile, a writ of Entre vpon disseis-

disseisin &c.

And note well that in such discents that take away entries, it behoueth that a man die seised in his demesne as in fee taile, for dying seised for terme of life, or for terme of anothers life, shall neuer take away the entrie &c.

Also, a discent of reuersion or of remainder shall neuer take away entrie &c. so that in such cases that take away entries by force of discets, it behoueth that he that dieth seised haue fee & franktehement at the time of his dying, or els such discent taketh not away entrie.

Also as it is said of discents ỹ discend to the issue of him that dieth seised &c. the same law is where they haue no issue, but the tenemẽts discẽd to ỹ brother, or to the sister, or to the vncle, or to some other cosin of him, ỹ dieth seised &c.

Also, if there be Lord and tenaunt, and the tenaunt be disseised, and the disseisor alieneth to an other in fee, & the alienee dyeth without heire, and the Lord entreth as in his escheat. In this case the disseisee may enter vpon the Lord, for this that the Lord commeth not to the land by discent but by escheat.

Also, if a mã seised of certaine land in fee, or in fee taile vpon condition to yeeld certein rẽt, or vpon other condition, though that such tenãt seised in fee, or in fee taile die seised, yet if ỹ condition be broken in their life, or after their decease &c. this taketh not away the entrie of the feoffor, nor of ỹ donor, or of their heirs, for this that the tenãcy is charged with the condition,

dition, and the eſtate of the tenaunce is condicionall in whoſe handes ſoeuer the tenancy ſhall come &c.

Alſo, if ſuch a tenant vpon condition be diſſeiſed, & ỹ diſſeiſor die thereof ſeiſed, & the land diſcẽdeth to ỹ heire of ỹ diſſeiſor, now the entre of the tenant vpon cõdition that was diſſeiſed is taken away, but if the condition be broken &c. then may the feffor or the donor ỹ made the eſtate or their heires enter &c. Cauſa qua ſupra.

Alſo, if a diſſeiſor die ſeiſed, & his heires enter &c. the which endoweth the wife of the diſſeiſor of the third part of the tenemẽts, in this caſe, as to the third that is aſſigned to the wife in dower, incontinent anon after that the wife entreth and hath poſſeſſion of the ſame third part, the diſſeiſee may lawfully enter vpon the poſſeſſion of his wife in the ſame third part. And the cauſe is for this, that when the wife hath her dower, ſhe ſhalbe adiudged in rather immediatly by her huſband then by the heire, & ſo as to the franktenement of the ſame third part, the diſcent is defeated. And ſo ye may ſee how before the dowment the diſſeiſee might not enter in any part &c. and after the dowment he may enter vpon the wife, and yet hee may not enter vpon the other two partes that the heire of the diſſeiſor hath by diſcent &c.

Alſo, if a woman bee ſeyſed of land in fee, whereof I haue right and title to enter, if the woman take an huſband and haue iſſue betweene them, and after the wife dyeth ſeiſed,

and after that the huſband dieth, and the iſſue entreth &c. in this caſe I may enter vpon the poſſeſſion of the iſſue, for this, that the iſſue commeth not to the tenements immediatly by diſcent after the death of his mother, An. 9. H. 7. fol. 24. it is holden contrary.

Alſo, if a diſſeiſor infeoffe his father, & the father entreth & dieth of ſuch eſtate ſeiſed, by which the tenements diſcend to the diſſeiſor, as to the ſonne and heire &c. In this caſe the diſſeiſee may well enter vpon the diſſeiſor, notwithſtanding the diſcent, for this, that as to the diſſeiſin, the diſſeiſor ſhalbe aiudged in but as the diſſeiſor, notwithſtanding the diſcent.

Alſo, if a man ſeiſed of certaine land in his demeane as of fee, hath iſſue two ſonnes & dyeth, & the yonger ſonne entreth by abatement in the land, the which hath iſſue, and of this dyeth ſeyſed, and the tenements diſcend to the iſſue, and the iſſue entreth into the land: In this caſe the elder ſonne or his heires may enter by the lawe vpon the iſſue of the yonger ſonne, notwithſtanding the diſcent, for this, that when the yonger ſonne abated in the land after the death of his father, before any entrie of the elder, the law intendeth that he entreth in clayming as heire vnto his father, and for this that the elder brother claymeth by the ſame title, that is to ſay, as heire vnto his father, hee & his heires may enter vpon the iſſue of the yonger brother, notwithſtanding the diſcent &c. for this, that they claime by one ſelfe

title.

title, And in the ſame maner it ſhalbe if there be many diſcents from one iſſue to an other iſſue of the yonger ſonne &c. But in ſuch caſe, if the father were ſeiſed of certain lands in fee, and hath iſſue two ſonnes and dieth, and the elder ſonne entreth and is ſeiſed &c. And after the yonger ſonne diſſeiſeth him, by which diſſeiſin he is ſeiſed of fee, and hath iſſue, and of ſuch eſtate dieth ſeiſed, then the elder brother may not enter, but is put to his writ of Entre vpon diſſeiſin for to recouer the land. And the cauſe is for this, that the yonger brother commeth to the tenements by a wrong diſſeiſin made vnto his elder brother, & for that wrong the law may not intend that hee claymeth as heire to his father, no more then if a ſtraunge perſon had diſſeiſed the elder brother that neuer had any title &c. And ſo may yee ſee the diuerſitie, where the yonger brother entreth after the death of his father, before any entrie made by the elder brother in ſuch caſe &c. And where ỹ elder brother entreth after the death of his father, & is diſſeiſed by the yonger brother &c. In the ſame maner if a man ſeiſed of certain land in fee, hath iſſue two daughters, & dieth, & the elder daughter entreth in the land, claiming al the land to her, and there of onely taketh the profites, and hath iſſue & dieth ſeyſed, by which her iſſue entreth, which iſſu hath iſſue and dieth ſeiſed, and the ſecond iſſue entreth &c. & ſic vltra, yet the yonger daughter and her iſſue, as to the halfe may enter vpon

euery

euery iſſue of the elder daughter, notwithſtanding ſuch diſcent, for this that they claime by one ſelfe title &c. But in ſuch caſe if both two ſiſters come into the land to enter after the death of their father, & thereof were ſeiſed, and after the elder ſiſter therof diſſeiſed the yonger ſiſter of that, that to her belongeth, & therof is ſeiſed in fee, & hath iſſue, & of ſuch eſtate dyeth ſeiſed, by which the tenements diſcend to the iſſue of the elder ſiſter, then the yonger ſiſter or her heires may not enter &c. Cauſa qua ſupra.

Alſo, if a man ſeiſed of certaine land hath iſſue two ſonnes, and the elder brother is baſtard, and the yonger brother Mulier, and the father dyeth, and the baſtard entreth and claimeth as heire vnto his father, and occuppeth the land all his life without any entre made vpon him by the mulier, and the baſtard hath iſſue and dyeth of ſuch eſtate ſeiſed in fee, and the land diſcendeth to his iſſue, and his iſſue entreth &c. in this caſe the Mulier is without remedy, for he may not enter, nor he ſhall haue no action for to recouer the land, for this that it is an ancient law in ſuch caſe vſed. But it hath been an opinion of ſome men, that, that ſhall be vnderſtood where the father hath a ſonne a baſtard by a womã, and after he wedeth the ſame woman, and after the eſpouſall he hath iſſue by the ſame woman a ſonne or a daughter mulier, & the father dyeth &c. if ſuch a baſtard enter &c. and hath iſſue, and dyeth ſeyſed &c. Then ſhal the iſſue of ſuch a baſtard

haue

haue the land cleerely to him as it is aforesaid &c. And not any other bastard borne of the mother that was not espoused to his Father, and this is a good and reasonable opinion: For such a bastard borne before the espousels solemnized betweene his father and his mother by the lawe of holy Church, is Mulier, though that by the law of the land he is a bastard borne, and so he hath colour of entre as heire to his father, for this that hee is by one law Mulier, that is to say, by the lawe of holy Church. But otherwise it is of a bastard that hath no manner of colour to enter as heire, insomuch that he may not in no law be said Mulier &c. for such a Bastard is sayd Quasi nullius filius: But in such case aforesaid, where the bastard entreth after the death of his Father, and the Mulier putteth him out, and after the bastard disseiseth the Mulier, and hath issue, and dyeth seysed, and the issue entreth, then the Mulier may haue a writ of Entre vpon Disseisin against the issue of the bastard, and recouer the land &c. And so may yee see the diuersitie where such a Bastard continueth his possession all his lyfe without any interruption, and where the Mulier entreth and interrupted the possession of such a bastard.

Also if a child wͤin age haue title & cause to enter into any lands or tenements vpon an other ẏ is seised in fee, or in fee taile of the same lāds or tenemēts, if such a mā ẏ is so seised die

of

of ſuch eſtate ſo ſeyſed, and the tenements diſcend to his iſſue during the time that the child is with in age, ſuch diſcent ſhall not toll the entre of the child, but hee may enter vpon the iſſue that is in by diſcent &c. for this that no laches ſhalbe adiudged in a child within age in ſuch caſe &c.

Alſo, if the huſbād and his wife, as in right of the wife haue title and right to enter in the tenements that another hath in fee, or in fee tayle, & ſuch a tenant dieth ſeiſed &c. In ſuch caſe the entre of ỹ huſband is takē away vpon the heire that is in by diſcent. But if the huſbād die, then the wife may well enter vpon the iſſue by diſcent, for this that the laches of the huſband ſhall not turne to the wife and to her heirs in prēiudice nor in damage in ſuch caſe, but that the wife & her heires may well enter where ſuch diſcēt is during the couerture &c.

Alſo, if a man that is not of whole minde, that is to ſay in latin, Qui nō eſt compos mē-tis, hath cauſe to enter in any ſuch teneīets, if ſuch diſcent vt ſupra be had in his life during the time that he was out of his mind, & after die, his heires may well enter vpon him that is in by diſcent. And in this may ye ſee a caſe that the heir may enter, & yet his aūceſter that had ỹ ſame title may not enter, for he that was out of his minde at the time of ſuch diſcent, if he will enter after ſuch a diſcēt, if an actiō vpō this be ſued againſt him, he hath nothing for him to plead, or to helpe him, but ſay ỹ he was

out

out of mind at the time of such discent &c. And he shal not be receiued to say this, for this that no man of full age shal be receiued in any plee by the law to dislait or dilable his own person. But the heire may well dilable the person of his ancestor for aduantage of the heire in such case, for this, that the laches may be adiudged by the law in him that hath no discretion in such case. And if such a man out of his minde make a feffement &c. he may not enter, ne haue a writ called Dum non fuit cõpos mentis &c. Causa qua supra. But after his death his heire may wel enter or haue the same writ Dum nõ fuit compos mentis at his election &c.

Also, if I be disseised by a child within age that alieneth to another in fee, and the alienee dieth seised, and the tenements discend to his heire, the child being within age, mine entre is taken away. But if the child within age enter vpon the heire that is in by discent, as he well may, for this that the discent was during his nonage, then I may wel enter vpon the disseisor, for this, that by his entre he hath defeated and adnulled the discent.

And in the same manner it is where I am disseised, & ỹ disseisor maketh a feoffemẽt in fee vpon conditiõ &c. and the feoffee dieth of such estate seised &c. I may not enter vpon ỹ heire of the feoffee: But if the condition be brokẽ so that by such cause the feoffor entreth vpon the heire, now may I wel enter, for this that whẽ the feffor or his heires enter for the condition broken,

broken, the discent is vtterly defeated.

Also, if I be disseised, and the disseisor hath issue and entreth into Religion, by force of which the landes discend to his issue, in this case I may well enter vpon the issue, and yet there was a discent: But for this that such discent commeth to the issue by the fathers deed, that is to say, for this that he entred into religion &c. and his discent commeth not to him by the deed of God, that is to say, by death &c. mine entrie is congeable and lawfull, for if I arraigne an assise of Nouel disseisin against my disseisor, though he after enter into Religion, this shall not abate my writ: But my writ this notwithstanding, shall abide in his force and strēgth, and my recouery against him shal be good. By the same reason the discent that came to his issue by his own deed may not put me from mine entrie &c.

Also, if I let to a man certaine landes for terme of xx. yeeres, and another disseiseth me, and putteth out the termor, and dyeth seysed, and the tenements discend vpon his heire, I may not enter, and yet the lessee for terme of yeeres may well enter, for this that by his entrie hee putteth not out the heire that is in by discent from the franktenement that vnto him discended, but onely claymeth to haue the tenements for terme of yeeres, the which is no expulsing of the franktenement of the heire, that is in by discent: But otherwise it is where my tenaunt for terme of life is disseised

&c.

&c. Causa qua supra &c.

Also, it is said that if a man bee seised of tenements in fee by occupation in time of war, & dieth thereof seised in time of warre, and the tenemẽts discend to his heire, such discẽt putteth out no man of his entre. And of this a mã may see a plee in a writ of Ayel, An. 7. E. 2.

Also, that no dying seised (where all the tenements come to another by succession) shall take away the entrie of any person &c. For of Prelates, Abbots, Priors, Deanes, or Parsons of Churches &c. though that there were 20. successors, this putteth no man from his entrie &c. More shall be said of discents in the Chapter of Continuall claime &c. See stat. 32. H. 8. ca. 33.

Continuall claime.

COntinual claime is, where a mã hath right and title to enter in any lands or tenemẽts whereof another is seised in fee, or in fee taile, if hee that hath title to enter make continuall claime to the lands and tenements, before the dying seised of him that holdeth the tenemẽts: Then though such a tenaunt dye thereof seysed, and the landes and tenements discend to his heire, yet may hee that hath made such claime, or his heires, enter into the lands and tenements discended, because of the continuall claime made, notwithstanding such discent. As in case a man be disseised, and the disseisee

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maketh continuall claime to the tenements in the life of the disseisor, though the disseisor die seised in fee, and the land discendeth vnto his heires, yet may the disseisee enter vpō the possession of the heire, notwithstanding such discent.

In the same maner it is, if tenant for terme of life alien in fee, he in the reuersion, or hee in the remainder may enter vpō the alienee. And if such alienee die seised of such estate without continuall claime made to the tenements before the dying seised of the alienee, & the tenements because of the dying seised of the alienee discend vnto the heire of the alienee, then may not he in the reuersion, nor he in the remainder enter. But if he in the reuersion, or he in the remainder that hath cause to enter vpon the alienee, made continual claime to the tenemēts before the dying seised of the alienee, then such a man may enter after the death of the alienee, as well as he might in his life &c.

Also, if lands bee let vnto a man for terme of his life, the remainder vnto an other for terme of life, the remainder vnto the third in fee, if the tenant for terme of life alien to another in fee, and he in the remainder for terme of life maketh continual claime vnto the land before the dying seised of the alienee, & after ꝙ alienee dieth &c. and after he in the remainder for terme of life dieth before any entre made by him: In this case hee in the remainder in fee may enter vpon the heire of the alienee, because

because of continuall claime made by him that had ỹ remainder for terme of life, for this that such right that he hath to enter, shall goe and remaine to him in the remainder after him, insomuch that hee in the remainder in fee may not enter vpō the alienee in fee during the life of him in the remainder for terme of life, & because he might not make continual claime, for none may make continual claime but when he hath title to enter. But it is to be shewed to thee my child how & in what maner continuall claime shalbe made, & to learne this 3. things there be to be vnderstood. The first thing is, if a man haue cause to haue any lands or tenements in diuers towns within one Shire, if he enter in any parcell of the landes or tenements that be in one towne, in the name of all the lands or tenements to which he hath right to enter within al the towns in the same shire, by such entre he hath as good possessiō & seisin of such lands or tenements wherof he hath title to enter, as if he had entred into euery parcell, and this seemeth great reason, for if a man will enfeffe another without deed, of certaine lands or tenements ỹ he hath in many towns within one shire, & he will deliuer seisin to the feoffee of parcell of the tenements within one towne in the name of all the lands & tenemēts ỹ he hath in the same towne, & in all the other towns &c. all the said tenements &c. shall passe by force of the saide liuery of seisin to him to whom such feoffement in such maner is made.

And yet hee to whom such liuery of seisin is made, hath no right to all the lãds & tenemẽts in al the townes, but by reason of the liuery of seisin made of parcel of ỹ lãds or tenemẽts in one town, a multo fortiori it seemeth good reason ỹ when a man hath title to enter into lãds or tenemẽts in diuers towns within one shire before any entrie by him made, that by the entrie of him made in parcel of the tenements in one towne, in the name of all the lands & tenements to the which hee hath title to enter wiñ the same shire, this is a seisin of all in him, and by such entrie hee hath possession and seisin in deed, as if he had entred into euery parcel &c.

The second is to vnderstand, that if a man hath title to enter into any lands or tenemẽts, if he dare not enter into the same lands or tenements, nor in any parcel therof for doubt of beating, or for doubt of maiming, or for doubt of both, if he go & approch as nigh ỹ tenemẽts as he dare for such doubt, & claime by wordes the tenements to bee his, incontinent by such claime he hath a possession & seisin in the tenemẽts, aswel as if he had entred indeed though he had neuer possessiõ or seisin of the same lãds or tenements before the said claime. And that the law is such, it is wel proued by a plee of an assise in the booke of Assises, An. 38. E. 3. P. 23. the tenor of which ensueth in this forme.

In the Coũty of Dorcet before the Justices it was found by verdict of Assise, that the plaintife which had right by discent of heritage,

tage, to haue the tenements put in plaint at the time of the death of his auncestor, which was dwelling in the towne where the tenements were, and by word claymeth the tenements among his neighbors, but for doubt of death he durst not approch vnto ỹ tenements, bringeth an assise, and vpõ the matter found, it was awarded that he should recouer.

The third thing is, to vnderstand within what time, and by what time the claim that is said cõtinual claime shal serue & help him that made the claime & his heire. And as to this it is to wit, ỹ he that hath title to enter, when he will make his claime, if he dare approch vnto the land then it behoueth him to goe vnto the land, or to parcel of it, and make his claime: & if he dare not approch vnto the land for dread of beating, maiming, or death, thẽ it behoueth him to goe and to approch as nigh as he dare toward the land or parcell thereof, & make his claim. And if his aduersary that occupieth the land die seised in fee, or in fee tail, within a yere & a day after such claim made, by which the tenements discẽd vnto his sonne, as heire vnto him, yet may he that made the claim, enter vpon the possession of the heirs. But in this case after the yeere & the day that such claime was made, if none other claim be made, if the father then die seised the morrow after the yeere & the day, or at another day after &c. then may not he that made the claim enter. And therfore if he ỹ made ỹ claim will be sure alway that his entre

ſhall not be take away by ſuch diſcēt, it behoo-ueth him that within the yeere & the day after the firſt claime, to make another claime, in the foꝛme afoꝛeſaid. And within the yeere and the day after the ſecond claim, to make the 3. claim in the ſame maner, & within the yeere and the day after the thirde clayme, to make another claim &c. that is to ſay, to make another claim within euery yere & day next after euery claim made during the life of his aduerſary, & thē at what time that his aduerſary die, his entrie ſhall not be taken away by diſcent. And ſuch claime made in ſuch maner is moſt commonly taken and called continual claime of him that made the claime. But yet in caſe afoꝛeſaide, where his aduerſary dieth within the yere and the day next after the firſt claime, this is in the law a continual claim, inſomuch ẏ his aduer-ſary died within ẏ yeere & the day after ẏ ſame claime, foꝛ it is no need foꝛ him that made the claime, to make any other claime, but at what time he wil within the ſame yeere & the day &c. Alſo if his aduerſary be diſſeiſed w̄ in the yere and day after the claime, and the diſſeiſoꝛ dieth thereof ſeiſed within the yeere and the day &c. This dying ſeiſed ſhall not hurt him ẏ made the claime, but that he may enter &c. Foꝛ who-ſoeuer he be that died ſeiſed within the yeere & the day after ſuch claim, that ſhal not hurt him that made the claime, but that hee may emer though there were many dyinges ſeiſed, and many diſcents within the yere and the day &c.

Alſo

Also, if a man be disseised, & the disseisor die seised within the yeere & the day next after the disseisin done, whereby the tenements discend to his heire, in this case the entre of ỹ disseisee is taken away, for ỹ yere & the day that should helpe the disseisee in such case &c. shal not be taken from the time of the title of entre growen vnto him, but only from the time of the claime by him made in time aforesaid, & for that cause it shall be good for such a disseisee for to make his claime &c, in as short time as he may after the diss. &c.

Also, if such a disseisor occupy ỹ land by xl. yeres without any claime made by the disseisee &c. & the disseisee by little space before ỹ death of ỹ disseisor make claime in ỹ forme aforesaid, if so it fortune that within a yere & a day after such claime the disseisour die seised &c. ỹ entre of the disseise is congeable, and for this it shal be good for such a man that made no claime ỹ hath title to enter &c. when he heareth that his aduersary lieth sicke to make his claime &c.

Also, as it is said in the cases put before, where a man hath title to enter because of a disseisin &c. The same lawe is where a man hath right to enter because of the title &c.

Also in the said Presidents may yee know my childe two things. One is where a man hath title to enter vpon any tenant in tayle, if he make any such claime vnto the land &c. then is the state of the taile defeated, for ỹ claime is as an entre made by him, and is of the same

effect in the law, as if hee were vpon the same tenements, and had entred in the same tenements, as is afore said. And then when the tenant in taile immediatly after such claim continueth his occupation in the tenements, this is a disseisin made of the same tenements vnto him that made the claime, Et sic per consequens, the tenant then hath fee simple &c.

The second thing is, ỹ as oft as he that hath right to enter maketh such claime, & this notwithstanding his aduersary continueth his occupation &c. so oft the aduersary doth wrõg & disseisin to him that made the claim. And for this cause so oft may hee that made the same claime for euery such wrong & disseisin made vnto him, haue a writ of trespas, Quare clausum suũ fregit &c. to recouer his damages &c. Or he may haue a writ vpõ the statut of king Rich. the 2. made the 5. yere of his raigne supposing by his writ, that his aduersary hath entred into the lands or tenemẽts of him that made the claime, where his entrie was not giuen by the law &c. & by such action he shall recouer his damages &c. And if the case be such, that the aduersary occupy the tenemẽts with force & armes, or with a multitude of people at the time of such claime &c. Then may he that made ỹ claime, for euery such time haue a writ of forcible entre & recouer his treble damages

Also here it is to see if the seruant of a man that hath title of entre, may by the commaundement of his Master make continuel claime for

for his Master in his name, & it seemeth that in some cases he might do this, for if he by his cõmandement come to any parcell of the land and there maketh claime &c. in the name of his Master, this claime is good for his Master, for this that he hath done all that it behoueth his Master to do in such case &c.

Also if a Master say vnto his seruant that he dare not go into the lãd, nor into any parcel of the land for to make his claime &c. and dare not approch more nigh vnto ỹ same land, saue to such a place called Dale; & commandeth his seruãt to go to the same place of Dale, & there to make a claime for him &c. if the seruaunt do &c. this seemeth as good claim for his master, as if he had been there in his owne person, for that the seruant did all that his Master durst do, and ought to do by the law in such case.

Also, if a man be so sicke, or so lame that he may not in any maner come to the land, nor to any parcell of the same, or if there be a recluse that he may not because of his order go out of his house &c. if such a maner of person commaund his seruant to go and make claime for him &c. and the seruãt dare not go to the land, nor to any parcell thereof for doubt of beating, mayme, or death, and for that cause such seruant commeth as nigh to the land as hee dare for such dread, and maketh his claime &c. for his Master, it seemeth that such claime for his Master is good and strong in law, for els his master should be in too great mischief, for

it may well be that such a person that is sicke, or lame, or recluse, cannot find any seruaunt that dare go vnto the land, nor to any parcell of it to make the claime for him &c. But if the Master of such a seruãt be in good health, and may & dare well to go to the tenements, or to parcell of it to make his claime for him &c. if such a Master cõmaund his seruant to go to some parcel of the land & make claime for him &c. And when the seruãt is in going to do the cõmandement of his master, he heareth by the way such things that hee dare not goe to any parcell of the land for to make any claime for his master, & for that cause hee goeth as nigh vnto the land as he dare for doubt of death, and there he maketh claime for his Master in the name of his Master &c. It seemeth that the doubt in the law in such case shalbe if such claime auaile his Master or not, for this that the seruant did not all that his Master at the time of commaundement durst to haue done.

Also some haue said, that where a man is in prison and is disseised, and the disseisor dieth seised, during the time that the disseisee is in prison, by ꝯ which tenemẽts discended to the heire of the disseisor, they haue said that this shall not hurt the disseisee that is in prison, but that he may well enter notwithstanding such discẽt, for this that he may not make cõtinuall claime whẽ he was in prison. And also if such a one that is in prison be outlawed in an actiõ of Det or Trespas, or in appeal of robbery &c.

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he shall reuerse such outlawry by writ of Error &c. because he was in prison at the time of the outlawry against him pronounced.

Also if a recouery be had by default against such a one that is in prison, he shall auoid the iudgement by a writ of Error, for this that he was in prison at the time of such default made &c. and because that such matters of record shal not hurt them that be in prison, but that it shalbe reuersed &c. a multo fortiori. It seemeth that a matter in deed, that is to say, such discent had when he was in prison shall not hurt him &c. specially for this, that hee may not go out of prison to make continual claime &c.

And in the same maner it seemeth to them where a man is out of the realme in the kings seruices for busines of the realm, and if a man be disseised when he is in the seruice of ỹ king, that such discent shal not hurt the disseisee, but for this that hee might not make continuall claime &c. it seemeth vnto them, that when hee commeth againe into England, hee may enter againe vpon the heire of the disseisor &c. For such a man shall reuerse an outlawry that is pronounced against him during the time that he is in seruice &c. Ergo a multo fortiori hee shal haue aide by the law in the other case &c.

Also others haue said, that if a man be out of the Realme, though he be not in the kings seruice, if such a man being out of the Realme be disseised of lands or tenements within the Realme, and the disseisor die seised &c. the dis-

seisee

ſeiſee being out of the Realme, it ſeemeth vnto them, that when the diſſeiſee commeth into the Realme, that he may well enter vpon the heire of the diſſeiſor &c. and this ſeemeth vnto them for two cauſes: One is, that he that is out of the realme, may not haue knowledge of the diſſeiſin made vnto him by vnderſtanding of the law, no more then that a thing done out of the Realme may be tried within this Realme by the othe of xij. men, and to compell ſuch a man to make continuall claime, which by the vnderſtanding of the law can haue no knowledge or cogniſance of ſuch diſſeiſin made or done, this ſhalbe inconuenient, namely when ſuch a diſſeiſin is done vnto him, whē he was out of the Realme, And the dying ſeiſed was done whē he was out of the realme, for in ſuch caſe he may not by poſſibility after the cōmon preſumption make no continuall claime: But otherwiſe it ſhalbe if the diſſeiſee were within the realm at the time of the diſſeiſin, or at the time of the dying ſeiſed of the diſſeiſor &c. In other matter they alleage for a prooke, ỹ before the ſtatute of king Ed. the 3. made the 34. yere of his raigne, by which ſtatute Nonclaime is out &c. the lawe was ſuch, that if a fine were leuied of certain lāds or tenemēts, if any that was a ſtranger to the fine had right to haue & to recouer the ſame lands or tenements, if he came not & made his claime thereof within a yere and a day next after the fine leuied, he ſhal be barred for euer, Quia dicebatur finis quod

finem

finē litibus imponebat. And that the law was such, it is proued by the statut of West. the 2. De donis condicionalibus, where it speaketh, if the fine be leuied of tenements giuen in the tatle &c. Quod finis ipso iure sit nullus, nec habeant hæredes, aut illi ad quos spectat reuersio (licet plene ætatis fuerint, in Anglia, & extra prisona) necesse apponere clameū suum. So it is proued, that if a straunger that hath right into the tenements, if he were out of the realm at the time of the fine leuied &c. shall haue no damage though that such fine was matter of record: by greater reason it seemeth vnto them that a disseisin & discent that is matter in deed, shall not so greeue him that was disseised whē hee was out of the Realme at the time of that disseisin, and also at the time that the disseisor died seised &c. but that he may well enter notwithstanding such discent. Also inquire if a man be disseised, & he arraine an Assise against the disseisor, & the recognitors of ỹ assise challenge for the plaintike, & the Justices of assise wil be aduised of their iudgmēts vntill ỹ next assise &c. & in the meane season the disseisor dieth seised &c. yet the said suit of the assise shalbe taken in law for the disseisee a cōtinual claim, insomuch that no default was in him &c.

Also inquire if an Abbot of a monastery die, & during the time of vacation, a man wrongfully entreth in certain parcels of land of the Monasterie, claiming the land vnto him and his heires, and of that estate dieth seysed, and

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the land diſcended vnto his heires, and after that an Abbot is choſen, & made Abbot of the Monaſtery, a queſtion is if the abbot may enter vpō the heir or not. And it ſeemeth to ſome that the Abbot may well enter in this caſe, for this that the Couent in time of vacation was no perſon able to make continual claim, for no more then be they perſonable to ſue an action, no more be they perſonable to make continual claim, for the couent is but a dead body without head, for in time of vacation a grant made vnto them is void, & in this caſe an abbot may not haue a writ of Entre vpon diſſeiſin againſt the heir, for this ỹ he was neuer diſſeiſed. And if the abbot may not enter in this caſe, then he ſhalbe put vnto his writ of Right, the which ſhalbe too hard for the houſe: By which it ſeemeth to them that the abbot may wel enter &c.

Quære de dubijs, legem bene diſcere ſi vis,
Quærere dat ſapere quæ ſunt legitima vere,

¶ Releales.

RElealeſ be in diuers maners, that is to ſay, releaſe of right that a man hath in lands or tenemets, and releale of actiōs reals & perſonals, & of other things. Releale of all the right that a man hath in lands or tenements &c. is commonly made in ſuch forme, or to ſuch effect. Nouerint vniuerſi per præſentes me A. B. remiſiſſe, relaxaſſe, & omnino de me & hæredibus meis quietū clamaſſe E. de D. totum ius, titulum, & clameū meū quæ habui, habeo, vel quouiſmodo in futur habere potero, de

de, & in vno meſuag. cũ ptiñ in P. And it is to be vnderſtood, that theſe wordes, (Remiſiſſe & quietũ clamaſ.) be of ſuch effect as theſe wordes, Relaxaſſe &c. And alſo theſe wordes which be cõmonly put in ſuch deedes of releaſes &c. that is to be vnderſtood, Quę quouiſmodo in futurũ habere potero, be as wordes void in the law, for no right paſſeth by a releas but the right ỹ there lieſſor hath at ỹ time of his releas made: For if it be father and ſonne, and the father be diſſeiſed, & the ſon, liuing his father, releaſeth by his deed to his diſſeiſor al the right that he hath or may haue in the ſame tenemẽts, without clauſe of warrantiſe &c. and after the father dieth, the ſonne may lawfully enter vpon the poſſeſſiõ of the diſſeiſor, for this that he had no right in the land liuing his father, but the right diſcended vnto him by diſcent after the releaſe made by the death of his father. Alſo in a releas of all the right that a man hath in certain lands, it behoueth vnto him to whom the releas is made in ſuch caſe, that hee hath a freehold in the landes in deed or in the law, at the time of the releas made. for in euery caſe where he to whome the releas is made hath a freehold in deed or in law at the time of the releaſe made &c. the releaſe is good. Franktenement in law is, as if a man haue diſſeiſed another, & ther of died ſeiſed, by the which the tenements diſcend vnto his ſon, howbeit that his ſonne enter not in the tenements, yet hee hath a franktenement in the law, which by force of

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the diſcent is caſt vpon him, and therefore the releas made is good enough. And if he take a wife ſo being ſeiſed in the law, howbeit that he neuer enter in deed, & dieth, his wife ſhal haue therof her dower. And in ſuch caſe of releas of all his right, howbeit that he to whom the releas is made, ne hath any thing in the frãktenement, neither in deed nor in law, yet the releas is good enough: As if the diſſeiſor haue let land that he had by diſſeiſin to another for terme of his life, ſauing the reuerſion to him, if the diſſeiſee or his heires releas vnto the diſſeiſor all the right &c. that releaſe is good, for that that he to whom the releaſe is made, had in him a reuerſiõ at the time of ỹ releas made.

In the ſame maner, if a leas be made to a mã for terme of life, the remainder vnto another for terme of life, the remainder vnto the third in taile, the remainder vnto the 4. in fee, if a ſtranger that hath the right vnto the land releas all his right vnto any of them in the remainder, ſuch releas is good, for this that euery of them hath a remainder veſted in himſelf, yet if the tenant for terme of life be diſſeiſed, & after he that hath right (the poſſeſſion being in the diſſeiſor) releas vnto one of them to whom the remainder was made, all his right &c. that releas is voide, for that that he ne had in him no remainder in deed, but al onely a right of a remainder at the time of the releas made.

And note, that euery releas made to him ỹ hath a reuerſion or remainder in deede, ſhall

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ſerue & helpe them ꝯ haue the franktenement, aſwell to them to whom the releas is made, if the tenant haue the releaſe in his hand &c.

In the ſame maner a releas made to a tenāt for terme of life, or to a tenant in the taile, ſhal enure vnto them in the reuerſion, or to them in the remainder, as wel as to the tenaunt of the franktenemēt, and ſhall haue as great aduantage of that, if that they may ſhew it.

And if there be lord and tenant & the tenant is diſſeiſed, and the diſſeiſee releaſeth vnto the diſſeiſor all the right that he hath in the ſeignorie, or in the land, that releas is good, & the ſeignorie is extinct. And if the goods of ꝯ diſſeiſee be taken, and of them the diſſeiſe ſueth a Replegiare againſt the lord, he ſhall cōpell the lord to auow vnto him, & if hee will auow vpon the diſſeiſor, then vpon the matter ſhewed, the auowrie ſhall be abated, for the diſſeiſee is tenant to them in right and in law.

Alſo if land be giuen to a man in the taile, reſeruing vnto the donor & his heirs a certain rent, if the donee be diſſeiſed, and after the donor releaſeth to ꝯ donee all the right ꝯ he hath in the land, & after the donee entreth into the land vpon the diſſeiſor: in this caſe the rent is gone, for this that the diſſeiſee at the time of the releaſe made was tenant in right, & in law vnto the donor, and the auowry of fine force ought to be made vpō him by the donor of the rēt behind &c. But yet nothing of the right of the land, that is to ſay, of the reuerſion ſhall

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paſſe by ſuch releas, for this that the donee to whom the releas was made then had nothing in the lād but only a right, & ſo the right of the land may not paſſe by ſuch releas of the donee.

In the ſame manner it is, if a leas be made to one for terme of life, reſeruing to the leſſor and to his heires certaine rent, if the leſſee bee diſſeiſed, and after the leſſor releaſeth to the leſſee and to his heires, and after the leſſee entreth, howbeit that in the caſe the rent is extinct, yet nothing of the rent paſſeth &c. Cauſa qua ſupra. But if it be very Lord & very tenant, & the tenant maketh a feffemēt in fee, the which feffee neuer became tenant to the Lord &c. if the Lord releas to the feoffor al his right &c. that releaſe is void, for this that the feoffor hath no right in the land, and he is no tenant in right to the lord, but onely tenant as for the auowrie to be made, and he ſhall neuer compel the Lord to auow vpon him, for the lord may auowe vpon the feoffee if he wil. Otherwiſe it is where the very tenant is diſſeiſed, as in caſe aforeſaid, for if the very tenaunt that is diſſeiſed holdeth of the lord by knights ſeruice and dieth, his heyre being with in age, the Lorde ſhall haue and ſeiſe the ward of the heire. And ſo he ſhal not haue the ward of the feoffor that made the feoffement in fee, and ſo it is a great diuerſity betweene the two caſes

Alſo if a man enfeoffe another in his land vpon truſt, and to the intent that he ſhall perfourme his laſt wil, and the feoffour occupieth the

the ſame at the will of his feoffees, and after the feoffees releaſe by their deed vnto the feoffour al the right &c. This hath bin in queſtiõ if ſuch releas be good or not, & ſome haue ſaid that ſuch releas is good, for this that no priuitie was betweene the feoffees and their feoffour, in ſo much that no leaſe was made after ſuch feoffement by the feoffees and their feoffour to hold at their wil &c. and ſome haue ſaid the contrary, & that for two cauſes. One is, that when ſuch feoffements are made vpon confidence, to perfourme the wil of the feoffor, that it ſhall be vnderſtood by the law that the feoffour by and by ought to occupy the land at the will of his feoffees, and ſo it is ſuch maner of priuitie betweene them, as if a man make a feoffement to another perſon, and they incõtinent vpon the feoffement will ſay & grant that the feoffour ſhall occupy the land at their will &c. An other cauſe they alleadge, that if ſuch land be worth xl.s. by yere &c. Then ſuch feffor ſhall be ſworne in aſſiſes and in other inqueſts, in plees reals and alſo in plees perſonels, of what great ſummes ſoeuer that the plaintifes will declare &c. And this is by the common Lawe of the land: Ergo this is for a great cauſe, and the cauſe is that the law will that ſuch feoffors and their heirs ought to occupy &c. And to take thereof the rent & all the profits, and all maner of iſſues and reuenues &c. as though the tenements were their owne without interruption of feoffees, notwithſtã-

ding ſuch feoffements. Ergo the ſame law giueth a priuity between ſuch feoffors, and their feoffees vpon confidence &c. For which cauſes they haue ſaid, that the releaſe made by ſuch feoffees vpon confidence to the feoffor, or to his heires &c. ſo occupying the land &c. ſhall be good enough &c. And this is the better opinion as it ſeemeth, quære ſince the ſtatute 27. H. 8. cap. 10. Alſo releaſes after the matter indeed ſometime haue their effect by force to enlarge the eſtate of them, to whom the releas is made: As if I let certaine land to a man for terme of yeeres, by force whereof hee is poſſeſſed, and I releas vnto him all the right that I haue in the lande without more words ſet or put in the deede, and deliuer vnto him the deed: Then hee hath eſtate but for terme of his life, and the cauſe is for this, that when the reuerſion or the remainder is in a man the which will enlarge by his releaſe the eſtate of the tenant &c. he ſhall haue no greater eſtate but in the manner and fourme as if ſuch a leſſour were ſeiſed in fee, and will by his deede make eſtate to one in a certain fourme &c. and deliuer vnto him ſeiſin by force of the ſame deede, if in ſuch deed of feoffement there be no word of inheritaunce &c Then hee hath eſtate but for terme of life &c. and ſo it is in ſuch releaſe made by him in the reuerſion, or in the remainder: For if I let lande to a man for terme of life, and after I releaſe vnto him all my right without more ſaying in the releaſe

leaſe, his eſtate is not inlarged. But if I releas vnto him and to his heirs of his body engendred, then he hath fee taile, and if I releas vnto him & to his heires, then hath he fee ſimple. So it behoueth in ſuch caſe to ſpecifie in the deed, what eſtate he to whom the releas is made ſhall haue &c. And ſometime releas ſhal enure to let and put the right of him that maketh the releas to him to whom the releas is made: As a man is diſſeiſed & he releaſeth vnto the diſſeiſor all the right that he hath. In this caſe the diſſeiſor hath his right, ſo that where his eſtate before was wrong, now by ỹ releaſe it is lawful & right: but note well that when a mã is ſeiſed in fee ſimple of any lands or tenements, and another will releas vnto him all the right that he hath in the ſame tenements, it needeth not to ſpeake of the heires of him to whom the releas is made, for this that hee had fee ſimple at the time of the releas made: for if the releaſe were made to him and to his heires for one day, or for one hower, this ſhall be as ſtrong vnto him in the Lawe, as he had releaſed to him and to his heyres, for when his right was gone from him at one time by his releaſe without any condition &c. to him that had fee ſimple, it is gone for euer. But where a mã hath a reuerſiõ or a remainder in fee ſimple at the time of ỹ releas made, there if hee will releas to the Tenaunt for terme of yeeres, or for terme of lyfe, or in the taile, it behoooueth to determine the eſtate

that he to whom the releas is made ſhall haue by force of the ſame releas. For this that ſuch releas goeth to inlarge the eſtate &c. of him to whom the releas is made: but otherwiſe it is where a man hath but a right vnto the land & had nothing in ỹ reuerſion nor in the remainder in deed: for if ſuch a mā releas al his right to one that is tenant of the franktenement, all his right is gone, though that no mention be made of the heirs of him to whō the releas is made. For if I let land to a man for terme of life, if I after releas vnto him for to inlarge his eſtate, either it behoueth that I releas vnto him & to his heires of his body ingēdred, or to him and to his heirs males of his body begottē, or by ſuch lemblable eſtate &c. or otherwiſe he hath no greater eſtat thē he had before But if my tenant for terme of life let the ſame land out to another for terme of the life of his leſſee, the remainder to another in fee, now if I releas vnto him vnto whom my tenant letted for terme of life, I ſhall be barred for euer though that no mentiō be made of his heires, for this that at the time of the releas made I had no reuerſion but onely a right to haue the reuerſion. For by ſuch a leaſe with a remainder ouer that my tenant made, in this caſe my reuerſion is diſcontinued & ſuch a releas ſhall enure vnto him in the remainder to haue aduantage of this, aſwell as to the tenaunt for terme of life, for to that intent the tenaunt for terme of life and he in the remainder be as one

tenant

tenãt in the law, & be as if one tenãt were sole seised in his demean as of fee at ỹ time of such release made vnto him. Also if a man be disseised by two, if he release vnto one of thẽ he shall hold his fellow out of the lãd, & by such release shal sole haue possessiõ & estate in the lãd. But if one disseisor enfeoffe two in fee, & the disseisee release to one of them, this shall enure to both the said feffees. And the cause of the diuersitie between these two cases, is apparant inough.

Also, if J be disseised, & the disseisor is disseised, if J release to the disseisor of my disseisor, my disseisor shall neuer haue Assise nor enter vpon his disseisor, for this that his disseisor hath my right by my release &c. And so it seemeth in this case, ỹ if there were xx. disseisors ech after other, & J release to the last disseisor, he shal barre all the other of their actions, and their title. And the cause is as it seemeth, for this, ỹ in many cases whẽ a mã hath a lawfull title to enter, though he enter not &c. he shal defeat al mean titles by his release &c. But this is not in euery case as shalbe said afterward.

Also, if a man be disseised the which hath a sonne within age, and dieth, & being the sonne within age, the disseisor dieth seised, & the land discendeth to the heire, and a straunger abateth, and after the sonne of the disseisee when he commeth vnto ful age releaseth al his right &c. to the abatour. In this case the heire of the disseisor shal haue no Assise of Mortdaunceſter against the abator, but he shalbe barred of the

Assise, for this that the abator hath the right of the sonne of the disseisee by his releas, & the entre of the sonne was lawful &c. for this that he was with in age at ỹ time of the discent &c. But if a mã be disseised, & the disseisor maketh a feoffement vpon condition, that is to say, to yeeld vnto him certein rẽt, & for default of patment a reentre &c. if the disseisee release to the feffee vpon condition, yet this amẽdeth not the estate of the feffee vpon cõdition, for notwithstãding such releas, yet his estate is vpõ condition as it was before. In the same maner it is where a man is disseised of certaine land, & the disseisor graunteth a rent charge out of the same land, though that after the disseisee releaseth vnto the disseisor &c. yet the rent charge abideth in his force. And the cause is in these two cases, that a mã shal haue none aduãtage by such release that shall be against his owne proper acceptance, & against his owne grant. And though that some haue said that where the entre of a man is congeable vpon a tenãt, if he release to the same tenant, that this auaileth vpon the tenant so as he had entred vpon the tenant, and after enfeoffed him &c. this is not true in euery case, for in ỹ first case of these two cases, if the disseisee in fee enter vpon the feoffee vpon condition, and after enfeoffeth him then the condition is all put aside & void. And in the second case if the disseisee enter & enfeffe him that graunted the rent charge, then is the rent charge auoyded. But it is not auoyded

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by any ſuch releaſe with an entre made &c.

Alſo, if a man be diſſeiſed by a child within age, ye which alieneth in fee, & the alienee dieth ſeiſed, & his heire entreth (being the diſſeiſor within age) Now it is in the electiõ of the diſſeiſor to haue a writ of Dũ fuit infra ætatẽ, or a writ of right againſt the heire of the alienee, & which writ ſoeuer he taketh of them, he ought to recouer by the law. And alſo hee may enter into the lãd without any recouery, and in this caſe ye entre of the diſſeiſee is takẽ away: but in this caſe if the diſſeiſee releaſe his right to the heire of the alienee, & after the diſſeiſor bringeth a writ of Right againſt the heire of the alienee, & he ioyneth the miſe vpon ye clere right &c. the graũd aſſiſe ought by ye law to find that the tenant hath more clere right &c. then hath the diſſeiſour, for this that the tenant hath the right of ye diſſeiſee, & his releaſe, which is more auncient and more cleere right then the right of the diſſeiſor, for by ſuch releaſe, all the right of the diſſeiſee paſſeth vnto the tenant, and is in the tenant. And to this ſome haue ſaid, that in ſuch caſe where a man hath right to lands or tenements (but his entrie is not lawfull) if he releaſe vnto the tenaunt &c. then ſuch releaſe ſhall enure by way of extinguiſhment. And vnto this it may bee ſaid, that this is trueth vnto him that releaſeth, for by his releaſe he hath diſmiſſed himſelfe cleane of his right as to his perſon: But yet the right that he had may well paſſe & go vnto ye tenãt by his

release, for it should be inconuenient ẏ such an anciēt right should be extinct al vtterly &c. for it is cōmonly said, ẏ right may not die. But a release that goeth by ẏ way of extinguishment against al persons, is where he to whom ẏ releas is made, may not haue this ẏ vnto him is released. As if there be lord & tenāt, & the lord releaseth vnto ẏ tenāt al the right that he hath in the lordship, or al ẏ right that he hath in the land &c. such a release goeth by way of extinguishmēt against all persons, for this ẏ the tenant may not haue ẏ same of himselfe. In the same maner is a release made to ẏ tenāt of the land of a rēt charge, or of a cōmon of pasture, for it is that the tenant may not haue that, that vnto him is released &c. So such releases go away by extinguishmēt against all persons.

Also, to proue ẏ ẏ grand Assise ought to passe for ẏ demandant in the case aforesaid, I haue heard oftē in ẏ Lecture vpō ẏ statut of West. the 2. that beginneth, In casu quādo vir amiserit ꝑ defaltā tenementū qđ fuit ius vxoris suæ &c. that at ẏ cōmon law before that statut, if a lease were made to a tenant for terme of life, ẏ remainder ouer in fee, & a stranger by a fained action recouer against the tenant for terme of life by default, & after the tenāt dieth, he in the remainder hath no remedy before the statute, for this, that he had no possession of the land, but if he in the remainder had entred vpon the tenant for terme of life, and disseised him, and after the tenant entreth vpon him, & after the

tenant

tenant for terme of life leeſeth by ſuch recouery had by default, and dieth: now he in the remainder may wel haue a writ of right againſt him that recouered, for this that the miſe ſhall be ioyned onely vpon the cleere right. And yet in this caſe the ſeiſin of him in the remainder was defeated by the entre of the tenaunt for terme of life. But peraduenture ſome will argue & ſay, that he ſhall haue no writ of right in this caſe, for this that when the miſe is ioined in ſuch maner, that is to ſay, if the tenant haue more clere right to the land in the maner as it is holden, then the demandant hath in the maner as he demaundeth, And for this that the ſeiſin of the demaundant was defeated by the entre of the tenāt for terme of life, then he hath no right in the maner as he demandeth. Vnto this it may be ſaid, that thoſe wordes (Modo & forma pro vt &c.) in many caſes bee words of the maner of pleading, and no wordes of ſubſtance: For if a man bring a writ of Entre (In caſu prouiſo) of alienation made by the tenant in dower to his diſenheritance, and pleadeth of the alienation made in fee, and the tenant ſayth that hee aliened not in the maner as the demaundant hath declared, and vpon this they be at iſſue, and it is found by verdict that the tenāt aliened in the taile, or for terme of an others life, the demaundant ſhall recouer, and yet the alienation was not in the maner as the demandant hath declared.

Alſo, if there be Lord and tenant, and the tenant

tenãt holdeth of the Lord by fealty onely, & the lord diſtraineth ỹ tenant for rent, & the tenant bringeth a writ of treſpas againſt his lord for his cattell ſo taken, & the Lord pleadeth ỹ the tenant holdeth of him by fealty & certein rent, & for ỹ rent behind he came to diſtraine &c. & demaũdeth iudgmẽt of the writ brought againſt him, Quare vi & armis &c. And the other ſaith ỹ he holdeth not of him in the maner as he ſuppoſeth, & vpon this they be now at iſſue, & it is foũd by verdict that he holdeth of him by fealty tantũ. In this caſe the writ ſhal abate, & yet he held not of the lord in the maner as ỹ Lord had ſaid, for the matter of the iſſue is, whether the tenant holdeth of him or not: For if hee hold of him, though the Lord diſtraine for other ſeruices that hee ought not to haue, yet ſuch a writ of treſpas Quare vi & armis &c. lieth not againſt the Lord but ſhall abate.

Alſo, in a writ of Treſpas of beating, or of goods taken, if the defendãt plead not culpable in the maner as the plaintife ſuppoſeth, & it is found that the defendant is culpable in an other towne, or at an other day, then the plaintife ſuppoſeth, yet he ſhall recouer. And in many mo other caſes theſe wordes, that is to ſay, in the maner as the demaundant or the plaintife hath ſuppoſed, be no matter of ſubſtance of the iſſue: for in a writ of right where the miſe is ioined vpon the clere right, it is as much to ſay and to ſuch effect, that is to wit, whether hath the more right, the tenaunt or

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the demandant to the thing ſo demanded &c.

Alſo, if a man be diſſeiſed, and the diſſeiſor dieth ſeiſed &c. and his ſonne entreth by diſcent, and the diſſeiſee entreth vpon the heire of the diſſeiſor, the which entrie is a diſſeiſin &c. if the heire bring an Aſſiſe or a writ of Right againſt ỹ diſſeiſee, he ſhalbe barred: For this that when the graund aſſiſe is ſworne, their othe is vpon the clere right, and not vpon the poſſeſſion &c. for if the heire of the diſſeiſor had brought an Aſſiſe of Nouel diſſeiſin, or a writ of Entre in nature of aſſiſe, & recouered againſt the diſſeiſee, & ſued execution, yet may the diſſeiſee haue a writ of Entre in the Per againſt him of the diſſeiſin made vnto him by his father, or he may haue againſt the heir a writ of Right: But if the heire ought to recouer againſt the diſſeiſee in ỹ caſe aforeſaid by a writ of right, then all his right ſhalbe clerely gone, for this that a finall iudgement ſhould be giuẽ againſt him, which ſhould bee againſt reaſon where the diſſeiſee hath more clere right &c.

And know ye my ſon, that in a writ of right after this that the fower Knights be choſen in the graund Aſſiſe, then there is no greater delay then in a writ of Formedon, after this that the parties be at iſſue &c. And if the miſe bee ioyned vpon battaile, then there is leſſe delay.

Alſo, a releaſe of all the right &c. in ſome caſe is good made vnto him that is ſuppoſed tenant in the law, though he haue nothing in the tenements, as in a Præcipe quod reddat,

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if the tenant alien the land hanging the writ, and after the demãdant releaſed to him al his right, that releaſe is good, for this that hee is ſuppoſed to be tenant by the ſuit of the demandant, & yet he hath nothing in the land at the time of the releas made. In the ſame maner it is if in a Prȩcipe quod reddat the tenãt vouch, & the vouchee enter into the garranty, if after the demaundant releas to the vouchee all his right &c. this is good inough, for this that the vouchee after this that he hath entred into the garranty, is tenant in law to the demandant.

Alſo, as to releaſes of actions reals, and actions perſonels, it is ſo that ſome actions be mixt in the realtie and in the perſonaltie, as if an action of waſt be ſued againſt the tenant for terme of life, this action is in the realtie, for this that the place waſted ſhall be recouered. And alſo it is in the perſonaltie, for this that the treble dammage ſhalbe recouered for the wrong & waſt done by the tenãt, & for this in this actiõ a releas of actiõs reals is a good plee in barre, & ſo is a releas of actions perſonels. In the ſame maner it is in Aſſiſe of Nouel diſſeiſin, for this that it is mixt in the realtie and in the perſonalty. But if ſuch Aſſiſe be arraigned againſt the diſſeiſor, the tenant of the diſſeiſor may plead a releas of all actions perſonels for to barre the Aſſiſe, but not a releas of actiõs reals, for none ſhal pled a releas of actions reals in aſſiſe, but the tenants &c.

Alſo, in ſuch actions that ought to bee

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sued against the tenant of the frankstenement, if the tenant haue a releas of all actions reals of the demaundant made vnto him before the writ purchased, & he pleadeth it, this is a good plee for the demandant to say that he that pleadeth that plee had nothing in the frankstenement at the time of the releas made for that he had no cause to haue action real against him.

Also, in such case where a man may enter in lands or tenements, he may haue of this an action reall which is giuen vnto him by the law against the tenãt. As in this case the demandant releaseth to the tenant all maner actions reals, yet this taketh not away the entre of the demaundant, but the demaundant may well enter, notwithstanding such release, for this that nothing is released but the actiõ &c. In the same maner it is of things personels. As if a man wrongfully take my goods, if I release vnto him all actions personels, yet I may by the law take my goods out of his possession.

Also, if I haue cause to haue a writ of Detinue of my goods against another though ỹ I release vnto him all actions personels, yet I may take my goods out of his possession, for this that no right of goods is released to him but onely the action &c. Also, if a man be disseised, and the disseisour maketh a feoffement vnto diuers persons to his vse, and the disseisour continually taketh the profites &c. and the disseisee releaseth vnto him all actions reals

reals, and after hee ſueth againſt him a writ of entre in nature of aſſiſe, becauſe of the Statute, for this that he taketh the profites. Enquire how the diſſeiſour ſhalbe holpen by the ſaid releas, for if hee will plead the releas generally, then the demaundant may ſay that he had nothing in the franktenement at the time of the releas made, and if hee plead the releas ſpecially, then it behoueth him to knowledge a diſſeiſin, and then may the demandant enter in the land &c. by his conſiance of the diſſeiſin &c. But peraduenture by ſpeciall pleding he may be barred of the action that he ſueth &c. though that the demandant may enter &c.

Alſo if a man ſue appeale of felony of the death of his anceſtor againſt another, though the appellant releas vnto the defendãt al maner actions reals and perſonels, this ſhall not help the defendant, for this that this appell is not an action reall, inſomuch that the appellant ſhall not recouer any realty, nor ſuch appell is no action perſonall, inſomuch that the wrong was vnto his aunceſter and not vnto him, but if he releas to the defendant al maner of actions, then it ſhall be a good barre in appell, and ſo a man may ſee that a releas of all maner of actions, is better then a releas of actions reals and perſonels &c.

Alſo, in appele of robbery if the defendant will plead a releas of the appellant of all actiõs perſonels, this ſeemeth no plee, for an action of appeale where the appellant ſhall haue

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iudgement of death &c. is more high then an action personall, and it is not properly said an action personall, and therefore if the defendant will haue the release of the appellant to barre him of the appeale, it behoueth him to haue a releas of all mãner of appeales, or a release of all maner of actions, as it seemeth &c. But in appeale of maihem a releas of all maner of actiõs personals is a good plee in barre, for this that in such an action he shal recouer but dammages.

Also, if a man be outlawed in an action personal by proces of the originall, & bring a writ of error, if hee at whose suit he was outlawed wil plead against him a releas of actions personals, this seemeth no plee, for by the said action he shal recouer nothing in the personalty, but all onely to reuerse the outlawry: but a release of a writ of error shalbe a good plee &c.

Also, if a man recouer det or dammage, and he releas to the defendãt all maner of actions, yet hee may lawfully sue execution by Capias ad satisfaciend. or by Elegit, or by Fieri facias, for execution by such writs may not bee said an action, but if after a yeere and a day the plaintife will sue a Scire facias to haue execution &c. then it seemeth a releas of all actions shall be a good plee in barre, but some haue thought the contrary, insomuch that the writ of Scire facias is a writ of execution, and is to haue execution. But insomuch that vpon the same writ ỹ defendant may plead diuers matters

ters after the iudgement giuen to put him frō execution, as vtlawry & diuers other &c. therefore it may well be said action &c. and I trow ỹ in a scir. fac. out of a fine, a releas of al maner of actiōs is a good plee in bar, but where a mā hath recouered det or damage and it is accorded between them that the plaintif shall be put out frō action, thē it behoueth that that plaintife make a release to him of al maner actions.

Also if a mā release to another al maner demands, this is the most best releas that he to whom the releas is made can haue, and most shall enure to his aduātage, for by such releas of al maner of demands, all maner of actions reals & personels, and actions of appeales, be gone and extinct, and all maner of executions be gone and extinct: & if a man hath title to enter in any lands or tenements, by such releas his title is gone. And if a man haue rent seruice, or rent charge, or common of pasture &c. by such releas of all maner demands to the tenant of the land, whereof the seruice or the reentre is going out, or in what land soeuer the common be, the seruice and rent, and the common is gone and extinct &c.

Also, if a man releas to another all manner quarrels, or all controuersies or debates betweene them. Enquire to what matter, and to what effect such words do extend.

Also if a man be bound by his deed to another in a certain sum of money to pay at ỹ feast of S. Mich. then next following &c. if the obligе

ledge before the said feast, releas to ꝯ obligor all actions, he shall be barred of the duetie for euer, & yet he might haue no action at the time of the releas made. But if a mā let land to an other for terme of yeres, to yeeld at the feast of S Mich. next insuing xl.s. & before the same feast he releaseth to the lessee al actions, yet after the same feast he shall haue an actiō of debt for the nonpaiment of the xl.s. notwithstanding the said releas Study the cause of the diuersitie betweene these two cases.

Also, where a man will sue a writ of right, it behoueth that he pled of the seisin of himself or of his ancestors, & also that ꝯ seisin was in time of ꝯ same king, as he pleadeth in his plee, for this is an ancient lawe vsed, as it appeareth by report of a certain plee, in such form as insueth. Sir J. Barrey brought a writte of right against Rainold Ashlington, & demaūded certain tenements &c. the mise was ioined in the banke, & the originall & the proces were sent before Justices errāts where the parties came, & the xij. knights were swoorne without challenge of the parties to be allowed, for this ꝯ the election was made by assent of the parties, with the 4. knights, & the oth was such. That I shall say truth &c. whether R. of A. haue more right to hold the tenemēts that J. Barrey demanded against him by his writ of right, or John to haue the tenemēts as he demandeth, & for nothing to let to say the truth, as God mee helpe &c. without saying to their

knowledge, & such oth shalbe made in attaint, and in battail, and in waging of law, for those do euery thing vnto an end: but I. B. pleaded of the disseisin of one Rake his ancester in the time of king H. & Raynold vpō the mise ioined tēdred halfe a marke for the time &c. and vpon this Herle Iustice said to the grand assise, after that they were charged vpon the cleere right: Goodmen, Raynold gaue half a mark to ỹ K. for that time, to the intent ỹ if ye find that the ancester of I was not seised in time ỹ the demandant hath pleded, you shal inquire no further vpon the right, and for this ye shal say to vs whether the ancester of I. Rake by name, was seised in the time of K. Henry as he hath pleded or not, & if yee find ỹ hee was not seised in the time, ye shall inquire more, and if ye find ỹ he was seised, thē inquire farther of ỹ right: & after the grād assise came with their verdict & said that Rake was not seised in the time of king H. whereby it was awarded ỹ Raynold should hold the tenements against him demāded to him & to his heires quite of I. Barrey and his heirs, to the remnāt, and John in the mercy.

Confirmation.

A Deed of confirmation is most cōmonly in such form, or to such effect. Nouerit vniuersi &c. me A. de B. ratificasse approbasse & confirmasse C. de D. statum & possessionē quos habeo de, & in vno messuag. cum pertin in N. And in some case a deed of cōfirmatiō is good & vailable

able, where, in the same case a deed of releas is not good nor vailable. As I let land to a mā for terme of his life, the which letteth the same lād to another for xl. yeres, by force of ỹ which he is possessed, if I by my deed confirme ỹ state of the tenant for terme of yeeres, and the tenāt for terme of life dieth during ỹ terme of yeres, I may not enter in the land during the same term, yet if I by my deed of releas haue released to the tenāt for terme of yeres in the life of the tenant for terme of life, the releas shall be void for this, that thē no priuity was between me and the tenant for terme of yeeres, for a releas is not auaileable to the tenāt for terme of yeres, but where a priuity is between him and him that releaseth. In the same maner it is if I be disseised, & ỹ disseisor maketh a releas to another for term of yeres, if I releas vnto the termor that is void: but if I cōfirme the estate of the termor that is good & effectuall. Also, if I be disseised, & I cōfirme the state of the disseisor, the he hath a good & rightful estat in fee simple, though that in the deed of confirmatiō no mētion is made of his heires, for this that he had fee simple at ỹ time of the confirmation for in such case if the disseisee cōfirme the state of ỹ disseisor, to haue & to hold to him for term of his life, yet the disseisor hath fee simple, & is seised in his demesne as of fee, for this ỹ when his estat was cōfirmed, he had fee simple, & in such deed he may not chāge his state wout entre vpon him &c. in the same maner it is, if the

eſtat be cõfirmed for term of a day, or for term of an houre, he hath a good eſtat in fee ſimple, for this, ỹ his eſtate in fee ſimple was once cõfirmed, for cõfirmare, idẽ eſt q̃d firmum facere.

Alſo, if .ij. be diſſeiſors, & ỹ diſſeiſee releaſeth to the one, he ſhal hold his fellow out of ỹ lãd: but if the diſſeiſee confirme the eſtate of one wout more ſpeech in the deed, ſome ſay ỹ he ſhall not hold his fellow out, but he ſhal hold toint-ly with him, for this, ỹ nothing was cõfirmed but his eſtate that was toint, & for this ſome haue ſaid, ỹ if .2. tointenãts be, & the one cõfirmeth the eſtate of the other, that he hath but a toint eſtate as he had before. But if he haue ſuch words in the deed of cõfirmation, to haue & to hold to him and to his heires all the tenemẽts wherof mẽtion is made in the confirmation then he hath eſtate ſole in the tenemẽts, & therefore it is a good & a ſure thing in euery confirmation to haue theſe words, to haue and to hold the tenements &c. in fee, or in fee taile, or for me terme of life, or for terme of yeres after or as the cauſe or matter is: for to thintent of ſome, if a man let land to another for terme of life, and after hee confirmeth his eſtate by theſe words, to haue & to hold his eſtat to him & to his heires, this confirmation as concerning his heires is void, for his heires cannot haue his eſtate which was but for term of life, but if he confirme his eſtate by theſe words, to haue ỹ ſame lãd to him & to his heirs, this cõfirmatio maketh fee ſimple in this caſe to him

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in the land, for this, that these words to haue & to hold &c. goeth to the land & not to the estate that he hath &c. Also if I let certein land to a woman sole for terme of her life, the which taketh a husband, & after I confirm the estate to the husbād & to the wife for terme of their two liues, in this case ỹ husbād holdeth not iointly with the wife, but holdeth in the right of his wife for terme of his life: but this confirmatiō shal enure to the husbād by way of remainder for term of his life, if he suruiue his wife. But if I let land to a womā sole for terme of yeres, which taketh a husband, & after I cōfirme the estate to the husband & the wife, for terme of both their liues, in this case they haue ioint estate in the franktenement of the land, for this that the wife had no franktenement before.

Also, if a Parson of a church charg ỹ glebe of his Church by his deed, & the Patron & the Ordinary confirme the same grant, & all that is cōprised wīn the same grant, the same grant shalbe in his strength after the purpose of the same graunt, but in such case it behoueth ỹ the patron haue fee simple in the aduowson, for if he haue estate in ỹ aduowson for terme of life, or in tail, then the grant shal stand but during his life, & the life of the parson ỹ granted it &c.

Also if a man let land for term of life, which tenant for terme of life charget h the land with a rent in fee, & he in the reuersion confirmeth the same grant, this charge is good inough & effectual. Also if there be a perpetuall Chātry

whereof the ordinary hath nothing to meddle nor to do, the patron of the chātry, & the chaplain of the same chātry may charge the chātry w a rēt charge in perpetuity. Also in some case these verbes Dedi & cōcessi, haue the same effect in substāce, & shall enure to the same intent as this verb cōfirmaui: as if I be dissessed of a plough lād, & after I make such a deed &c. Sciant presentes &c. qđ dedi to the dissessor ȳ said plough lande &c. And if I deliuer onely the deed to him wout liuery of seisin of ȳ land, that is a good cōfirmation & as strong in ȳ law, as if he had in the deed this verb Cōfirmaui &c.

Also, if I let lād to a mā for term of yeres by force of which he is possessed, & after I make him a deed &c. Quod dedi vel concessi &c. the same lād to haue for terme of his life, & deliuer him ȳ deed, thē by & by he hath estate in ȳ land for term of his life, & if I say in ȳ deed, to haue to him & to his heires of his body engēdred he hath estat in ȳ tail, & if I say in ȳ deed, to haue & to hold to him & to his heires, he hath estate in fee simple, for this shal enure to him by force of confirmation to enlarge his estate. Also if a mā be dissessed, & the dissessor dieth seised, & his heires in by discent, after the dissesse, and the heire of the dissessor make iointly a deed to an other in fee, & liuery of seisin vpō this is made, as to ȳ heire of ȳ dissessor ȳ ensealeth the deed, the tenements passe by the same deed by way of fessement, and as to the dissessee ȳ ensealeth the same deed, this shal not enure by ȳ way of confirmation:

firmatiõ: But if ỹ disseisee in this case bring a writ of Entre in the (Per & Cui) against ỹ alienee of the heire of the disseisor, enquire how he shal plead ỹ deed against the defendãt by way of confirmation &c. And know this my child that it is one of the most honorable, laudable, and profitable things in our Law, to haue the science of well pleading, in actions reals and personals, and for this I counsaile thee, especially to set thy courage & care to learne that.

Also if there be Lord, and tenant, & the lord confirmeth the estate that the tenant hath in the tenemẽts, yet the seignior wholy abideth to the lord as it was before. In the same maner it is if a man haue a rent charge out of certein land, and he confirmeth the state that the tenant hath in the land, yet abideth to the confirmor the rent charge. In the same maner it is if a man haue cõmon of pasture in the land of any other, if he confirme the state of the tenant of the land, nothing shal departt frõ him of his common, but this notwithstanding the common abideth to him as it was before.

But if there be lord and tenant, which holdeth of his lord by seruice of fealty and xx.s. of rent, if the lord by his deed confirme the estate of the tenant to hold by xij.d.ſ.d. or by an ob. in this case the tenaunt is discharged of all other seruices, and shall yeeld nothing to the Lord but that that is comprised within the same confirmation, yet if the Lord will by the deed of confirmation, that the tenaunt in this

case ought to yeeld to him an Hauke or a Rose yeerely at such a feast &c. this reseruation is void, for this that hee reserueth to him a new thing that neuer was parcell of the seruices before the confirmation, and so the Lord may abridge the seruices by such confirmation, but he may not reserue to him a new seruice &c.

Also if there be lord, meine, & tenant, & the tenãt is an Abbot ỹ holdeth of the meine by certain seruices yerely, ỹ which hath no cause to haue acquitãce against his meine for to bring a writ of meine &c. in this case if the meine cõfirme the estate ỹ the Abbot hath in the lãd, to haue & to hold ỹ lãd vnto him & his successors in frãkalmoigne or free almes &c. in this case this cõfirmatiõ is good, & then the Abbot holdeth of ỹ meine in frãkalmoigne: & the cause is for this, ỹ no new seruice is reserued, for all ỹ seruices specially specified be extinct, & nothing is reserued to ỹ meine, but the abbot shal hold the land of him as it was before the cõfirmation, for he ỹ holdeth in frãkalmoigne ought to do no bodily seruice, so that by such confirmation it appeareth that the meine shall not reserue vnto him no new seruice, but that the lands shall be holden of him as it was before, and in this case the Abbot shall haue a writ of Meine if he bee distrained in his default by force of the said confirmation, where percase he might not haue such a writ before &c.

Also if I be seised of a villein, as of a villein in grosse, & an other taketh him out of my pos-

session

ſeſſion claiming him to be his villein, whereas he hath right to haue him as his villein, & after I confirme the eſtate to him that hee hath in my villein, this confirmation ſeemeth void, for this, that none may haue poſſeſſiō of a man as of a villein in groſſe, but he which hath right to haue him as his villein in groſſe, & inſomuch that hee to whom the confirmation was made, was not ſeiſed of him as of his villein at the time of his confirmation, ſuch confirmation is void: but in this caſe if ſuch words where in the deed, Sciatis me dediſſe & confirmaſſe tali &c. talem villanum meū, this is good, but this ſhall enure by force and way of grant, and not by way of confirmation &c.

Alſo ſometimes theſe verbes (Dedi & conceſſi) enure by way of extinguiſhment of the thing giuen or granted. As a tenant holdeth of his lord by certein rent, and the lord by his deed granteth to the tenant & to his heires the rent &c. this ſhall enure to the tenant by way of extinguiſhment, for by this graunt the rent is extinct. In the ſame maner it is where one hath a rent charge of certein land, & he granteth to the tenant of the land the rent charge, and the cauſe is for this, that it appeareth by the words of the grant that the will of the donour is, that the tenant ſhall haue the rent &c. in ſo much that he may haue no rent out of his owne land, for this deed ſhal be vnderſtood & taken for the moſt aduantage & auaile of the tenant that it may be taken, & for that, it is by way of extinguiſhment.

Alſo

Also, if I let land to a mā for term of yeres, and after I confirme his estate without mo wordes put in ỹ deed, he hath no greater estate but for terme of yeeres, as he had before: But if I release to him my right ỹ I haue in the land without mo wordes put in ỹ deed, he hath estate of frankētenement. And so maist thou my child vnderstād great diuersities between releases & confirmations. And if I be within age, & let land to one for terme of xx. yeres, and he graunteth the land for terme of x. yeres, so that he graunteth but parcell of the terme: In this case when I am of full age, if I release vnto the grauntee of the lessee &c. this release is void, for this, that there is no priuitie betweene him & me. But if I cōfirme his estate, then this confirmation is good: But if my lessee graunt all his estate to an other, then my release made to the grātee is good & effectual.

Also if a mā grant a rent charge out of his land to another for terme of his life, & after I cōfirme his estate in the same rent, to haue & to hold to him in fee taile, or in fee simple, this cōfirmation is void, as to the enlarging of his estate, for this, ỹ he that confirmeth had no reuersion in the rent: But if a mā seised in fee of rent seruice, or of rent charge, & he grāteth the rent to an other for terme of life, & the tenant attorneth, & after he cōfirmeth the estate of the grantee in fee taile, or in fee simple, this cōfirmation is good as to enlarge his estate after the wordes of the deed of confirmation, for this

that

that he ỹ confirmed the eſtate at the time of the confirmation had the reuerſion of the rent &c. But in this caſe aforeſaid, where a man granteth a rent charge to an other for terme of life, if he will ỹ the graũtee ſhall haue eſtate in the taile, or in fee, him behooueth ỹ the deed of the graũtee of the rent charge for terme of life, be ſurrendred or cancelled, and then to make it a new deed of ſuch a rent charge, to haue and to take to the grauntee in the taile, or in fee. Ex paucis dictus intendere plurima poſſis.

¶ Attournement.

Attournement is if there be Lord & tenant, & the Lord will grant by his deed the ſeruice of his tenant to an other for terme of yeres, or for terme of life, or in taile, or in fee, him behoueth that the tenant attourne to the grauntee in the life of the grauntor by force & vertue of the graunt, or otherwiſe the graunt is void, & attournement is none other thing in effect, but when the tenant hath hard of the graunt made by his Lord, that the ſame tenant by word agree to the ſaid graunt, as to ſay to the grauntee, I agree me to the graunt made to you, or I am wel content of the grant made to you &c. But the more common attournement is to ſay, ſir, I attourne to you by force of the ſame graunt, or I become your tenant &c, or to deliuer vneo the grauntee i. d. ob. or farthing, by way of attournement &c.

Alſo, if a man be ſeiſed of a manour, which manor is parcel in demeſne, & parcel in ſeruice

if

if he will alien such a manor to an other, it behoueth that by force of the alienation al the tenants that hold of ỹ alienor (as of this manor &c.) attourne to the alienee, or otherwise ỹ seruices abide continually in the alienor, except tenants at will, for it needeth not ỹ tenants at wil atturne vpon such alienation &c. for this ỹ the same lands or tenemẽts ỹ they hold at will do passe to ỹ alienee by force of such alienatiõ.

Also if there be Lord and tenãt, and the tenant letteth the tenements to a man for terme of life, the remainder to an other in fee, if the lord grant the seruices to the tenant for terme of life in fee, in this case the tenãt for terme of life hath fee in the seruices, but the seruices be put in suspence during his life, but his heires shall haue the seruices after his death, and in that case it needeth not attournement, for by the acceptance of the deed of him that ought to attorne, this is attornement in him selfe &c. but where the tenant hath as great and high estate in the tenements as the Lord hath in the seignory, in such case if the Lord graunt the seruice vnto the tenant in fee, this enureth by way of extinguishment, Causa patet.

Also, if there be Lord & tenant, & the tenant maketh a lease to one for term of life, sauing ỹ reuersion vnto him, if the lord grant the seignory to the tenãt for terme of life in fee, in this case it behoueth that he in ỹ reuersion attorne to the tenãt for term of life by force of ỹ grant, or otherwise the grant is void, for this ỹ he in

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the reuersion is tenant to the Lord.

Also, if there be Lord and tenant, and the Tenant holdeth of the Lord by twenty manner of seruices, and the Lord graunteth his Seigniory to another, if the tenant pay or do any of the seruices to the grauntee, this is a good attournement, of and for the seruices, though that the tenaunts entent was to attourne but of the same parcel, for this that the Seigniory is an whole thing, though that there be diuers manner of seruices that the tenant ought to do.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by many maner of seruices, and the Lord graunteth the seruices to another by fine, if the grauntee sue a Scire facias out of the same fine, for any parcel of the seruices, and had iudgement to recouer, this iudgement is a good attournement in the law for all the seruices.

Also, if the Lord of the rent graunteth the seruices vnto another, and the tenant attourneth by a peny, and after the grauntee distraineth for rent behinde, and the tenaunt to him maketh rescous: In this case the grauntee shall haue no assise of the rent, but hee shall haue a writt of Rescous, for that the gift of the penie was but by way of attournement. But if the tenant had giuen vnto the grauntee the said peny as parcell of the rent, or a halfe peny, or a farthing, by way of seisin of the rent, then this is a good attournement, and also it

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is a good seisin to the grauntee of the rent, and then vpon such rescous the grauntee shal haue an Assise &c.

Also, if a man let tenements for terme of yeres, by force of which the lessee is seised, and after the Lord graunteth by his deed the reuersion to another for terme of life, or in tatle, or in fee, it behooueth him in this case that the tenant for terme of yeeres attourne, or otherwise nothing passeth to such grauntee by such deed. And if in this case the tenant for term of yeeres attourne to the grantee, then by and by passeth the frankstenement to the grauntee by such attournement, without any liuery of seisin &c. for this, if any liuery shalbe made, or needeth to be made in such case, then the tenãt for terme of yeeres shalbe at the time of the liuery of seisin out of his possessiõ, which should be against reason.

Also, if lande bee let to a man for terme of yeeres, the remainder to another for terme of life, reseeuing to the lessor a certain rent by the yeere, and liuery of seisin is made vpon this to the tenant for term of yeres, if he in the reuersion in such case grant his reuersiõ to another &c. and the tenant that is in the remainder after ỹ terme of yeres attourneth, this is a good attournement, and he to whom the reuersiõ is graunted, by force of such attournement shall distraine the tenant for terme of yeeres for the rent due after such attournement, though the tenãt for terme of yeres neuer attourned vnto him,

him, and the cause is for that, where the reuersion is dependant vpon the state of franktenement, it sufficeth that the tenant of the franktenement attourne vpon such grant of reuersion &c. And it is to wit, that where a lease for terme of yeeres, or for terme of life, or a gift in the taile is made to any man, reseruing to such a lessor or donor certaine rent, if such a lessor or donor grant his reuersion to another, and the tenant of the land attourne, the rent passeth to the grantee, though in the deed of the graunt of reuersion, no mentiō is made of the rent, for this that the rent is incident to the reuersion in such case, and not conuersio, for if a mā will grant the rent in such case vnto another, reseruing to him ꝑ reuersion of the land though the tenant attourne to the grauntee, this shall be but a rent secke &c.

Also, if a man let lād to another for terme of life, and after such lease he cōfirmeth by a deed the estate of the tenant for terme of life, the remainder to another in fee, and the tenant for terme of life accepteth the deed, then is the remainder indeed to him to whō the remainder was giuen or limitted in the same deed, for by the acceptance of the tenant for terme of life of the same deed, this is a grant of him, and so an attournmēt in law: But yet he in the remainder shal haue none actiō of wast, nor other benefit by such remainder, but if he haue the same deed in his hand by which the remainder was graunted vnto him, & for this that in such case

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the tenant for terme of life will retaine to him the deed, to the intent that he in the remainder shall not haue an action of wast against him, for this that he may not come to haue the possession of the deed &c. It shall be good in such case for him in the remainder, that a deed indented be made by him that will make the confirmation, and the remainder ouer &c. And he that maketh such confirmation deliuer a part of the Indenture to the Tenaunt for terme of life, and the other part to him that hath the remainder, and then he by shewing of the part of the indenture, may haue an action of wast against the tenant for terme of life, & also other aduantage, that he in the remainder may haue in such case.

Also, if two Iointenauntes bee, which let lande to another for terme of life, yeelding to them and their heirs a certaine rent by yeere: In this case if one of the two iointenants in the reuersion releas to the other iointenants in the same reuersion, this release is good, and he to whom the releas is made, shal haue onely the rent of the tenaunt for terme of life, and shal haue a writ of wast against them, though he neuer attorned by force of such releas. And the cause is, for the priuitie that once was betwen the tenant for terme of life, and them in the reuersion.

In the same maner, and for the same cause it is, where a man letteth lande to another for terme of his life, the remainder to another

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for terme of his life, reseruing the reuersion to the lessour, in this case if he in the reuersion releas to him in the remainder &c. & to his heirs all his right &c. then he in the remainder hath a fee &c. and shall haue a writ of waste against the tenant for terme of life without any attornement of him &c.

Also, if a lease be made for terme of life the remainder vnto another in the taile, ỹ remainder ouer to the right heires of the tenaunt for terme of life, in this case if the tenant for terme of life grãt his remainder in fee to another by his deed, the remainder by & by passeth by his deed without any other attornement. For if any ought to attorn in this case, it should be the tenant for terme of life. And it were in vaine that he attorne vpon his owne grant &c.

Also, if there be Lord and tenãt, and the tenant holdeth of the Lord by certaine rent and knights seruices, if the Lord grant the seruices of the tenãt by fine, the seruices be by and by in the grauntee by force of the fine, but yet the lord may not distrain for any parcel of his seruices without attornement. But if the tenant die his heire beyng within age, the lord shall haue the ward of the body of the heire & of the land &c. howbeit that he neuer attorned. For this that the seignory was in the grauntee maintenant by force of the fine.

And also in some case if the tenant die without heire, the Lord shall haue the tenaunce by way of Eschete. In the same manner it is if a

mã grant the reuersion of his tenant for term of life to an other by fine, the reuersion passeth presently to the grauntee by force of the fine, but the grantee shall neuer haue action of wast without attornement &c. But yet if the tenant for terme of life alien in fee, the grauntee may enter &c. for this that the reuersiõ was in him by force of the fine, and such alienation was to his disinheritance. But in this case where the lord grauteth the seruices of his tenaunt, by fine, if the tenãt die, his heirs being of ful age, the grantee by the fine shal not haue the reliet, nor neuer shall distraine for the reliete, except there had bin some attornement of the tenant that died &c. for of such thinges that lye in distresse, vpon the which a writ of Replegiare is sued &c. a man ought to auow the taking good and righteous &c. there ought to bee attornement of the tenant, and howbeit that the grant of such seruices be by fine. But to haue ward of lands and tenemets to holdẽ during the nonage of the heire, or them to haue by way of escheat, there needeth not any distresse &c. but an entre in the lãd by force of the right of the seigniory that the grantee hath by force of the fine.

Also, in auncient Boroughes or Cities where tenements within the same boroughes or Cities beene deuiseable by testament by the custome and the vse &c. if in such borough or Citie a man be seised of rent seruice or of rent charge, and he deuiseth such rent or seruice to ano-

another by his testamēt and dieth &c. In this case he to whom the deuise is made may distrain for the rent of the seruices behind, howbeit that the tenant neuer attourned. In the same maner it is where a man letteth such tenemēts deuisable to another for terme of life, or for terme of yeeres, and deuised the reuersiō by his testamēt to another in fee or in fee tatle, and dieth, and anon after that the tenant maketh wast, hee to whom the deuise was made shall haue a writ of wast: howbeit that the tenant neuer attorned, and the cause is for this that the will of the deuisor made by the testament, shalbe performed after the intent of the deuisor, and if the effect of this should lie vpon the attourning of the tenant &c. Then percase the tenant would neuer attorne, and then the will of the deuisor should neuer be performed, and therfore the deuisee shal distraine or haue an action of wast without attornement. For if a man deuise such tenements to another by his testament (habend. sibi imperpetuum) and dieth, & the deuisee entreth, he hath a fee simple, Causa qua supra, and yet if a deed of feoffement were made to him by the deuisor of the same tenements (habendum & tenend. sibi inperpet.) if liuery and seisin were neuer thereupon made, he shall haue none estate but for terme of life &c.

Also, if a man seised of a Manor which is parcell in demeane, and parcell in seruices, and thereof be disseised, but the tenant

which holdeth of the manor, neuer attorneth to the disseisor in this case, howbeit ỹ the disseisor die &c. and his heire is in by discent, yet may the disseisor distrain for the rent being behind, & haue the seruice: but if ỹ tenants come to the disseisor & say we be come your tenants, &c. or otherwise make attornement to him &c. and after the disseisor dieth seised &c. then the disseisee may not distraine for the rent, for this that all the manor discended to the heire of the disseisor. But if one hold of me by rent seruice which is a seruice in grosse, and another that no right hath, claimeth the rent and receiueth and taketh the same rent of my tenant by coercion of distresse, or by other form and so disseiseth me by taking such rent, howbeit that such a disseisor die seised by such taking of the rent, yet after his death I may well distraine for the same rẽt being behind before the death of the disseisor and after his death, and the cause is this, ỹ such is not my disseisor but by election at my will, for howbeit that he took the rent of the tenant, I may at al times distraine my tenant for the rent behind &c. for it is to me but as if I will suffer the tenant to be by so much time behind of paimẽt to me of the same rent, for the paiment of my tenant to another to whom he ought not to pay, is no disseisin to me, nor shall not put me out of my rent without my will and election, for howbeit that I may haue assise against such a taker &c. yet this is at my election if I will take him as

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my disseisor or not, so ỹ such discents of rents in grosse ne putteth not out the lords frō their distresse, but ỹ at each time they may well distraine for the rent behind, & in this case if after the decease of him that so wrōgfully tooke the rent, I graunt by my deed the seruices to another, and the tenāt attorneth: this is good ynough, and the seruices by such graunt & attornement, incontinent be in the grauntee &c. But otherwise it is where the rent is parcell of the manor, and the disseisor dieth seised of the whole manor, as in the case beforesaid.

¶ Discontinuance.

DIscontinuance is an auncient word in the law, and hath diuers significations &c. but as to one intent it hath such a signification, ỹ is to say, where a man hath alened to another certain lands or tenements and dieth, and an other hath right to haue the same lands or tenements, but he ne may enter in thē, because of such alienation &c. As if an abbot seised of certaine lands and tenements in fee, and he alieneth the same landes and tenements to an other in fee or in taile, or for terme of life, & the abbot dieth, his successor may not enter in the same lands and tenements, howbeit that hee haue right to haue them as in the right of the house, but he is put to his actiō to recouer the same lands or tenements which is called a writ de ingressu sine assensu capitali.

And if a man ſeiſed of land as in the right of his wife &c. and thereof enfeoffeth an other &c. and dieth, the wife may not enter, but ſhe is put vnto her action the which is called Cui in vita. See ſtat. 32. H. 8. ca. 28. leaſes.

Alſo, if tenant in the taile of certaine land thereof enfeoffe another &c. and hath iſſue and dieth &c. his iſſue may not enter in the land, howbeit that hee hath right and title to that, but that he is put to his action, that is called a Formedone in the diſcender.

Alſo if there be tenaunt in the taile, & the reuerſion is to the donour & to his heires, if the tenant make a feffement &c. and dieth without iſſue, he in the reuerſion may not enter, but is put to his action of Formedon in the reuerter, and in the ſame maner it is where the tenant in the taile of certaine land where the remainder is to another in the taile, or to another in fee, if the tenant in the taple alieneth in fee, or in fee taile &c. and after dieth without iſſue, they in the remainder may not enter, but be put to their writ of Formedone in the remainder &c. and for this that by force of ſuch feoffement and ſuch alienations in the caſes aforeſaid, and in like caſes thoſe which haue title and right after the death of ſuch a feoffor or alienor may not enter, but be put to their actions Vt ſupra. Therefore ſuch feoffements and alienations be called diſcontinuances.

Alſo if a tenant in the taile be diſſeiſed, & he releaſeth by his deed to the diſſeiſour, & to his heires

heires all the right ỹ he hath in the same land, this is no discõtinuance, for this ỹ nothing of right passeth to the disseisor but for term of life of ỹ tenãt in the taile that made the release &c. But by the feoffemẽt of tenãt in the tayle a fee simple passeth by the same feoffemẽt by force of liuery of seisin &c. but by force of a release, nothing passeth but the right ỹ he may lawfully & rightfully release without hurt or dãmage to other persons which thereto haue right after his decease &c. & so it is a great diuersitie between feffement of the tenant in the taile, & a releas of the tenant in the taile. But it is said, that if tenant in the taile in this case release to the disseisour, and bindeth him and his heires to warrantise &c. and dieth, and this warranty discendeth to his issue, then that is a discontinuance because of warrãtise &c. But if a man haue issue a sonne by one wife which dieth, & after he taketh another wife, & the tenements be giuẽ to him and his second wife, and to the heirs of their two bodies engendred, and they haue issue another sonne, then the second wife dieth, and after the tenant in the taile is disseised, and he releaseth to his disseisour all his right &c. and bindeth him and his heires vnto warrantise, and dieth, this is no discontinuance to the issue in the taile by the second wife, but hee may well enter &c. for this that the warrantie discended to his elder brother that his father had by his first wife.

In ỹ same maner where ỹ tenemẽts be des-

cēdable to ỹ yonger sonne after the custome of borough English, be in taile &c. & the tenāt in the taile hath issue ꝙ. sonnes & is disseised, & he releaseth to his disseisor all his right wō warranty & dieth, the yonger sonne may enter vpō the disseisour notwithstāding the warrantise, for this ỹ the warrantise discendeth to the elder sonne, for alway the warrantise discēdeth &c. to him that is heire by the common law.

Also, if an abbot be disseised, & he releaseth to the disseisour with warrantise, this is no discontinuance to his successour, for this that nothing passeth by this release but the right that he hath during the time that he is Abbot and this warrantise is expired by his priuation or by his death.

Also, if tenāt in the taile be seised of certaine land, and he letteth the same land for terme of yeeres, by force of which lease the lessee is in possession, to which possession the tenant in the taile by his deed releaseth all his right that he hath in the same land to the lessee and to his heires for euer, this is no discontinuance, but after the decease of the tenant in the tayle, his issue may well enter, for this that by such release nothing passeth but for terme of lyfe of the tenant in the taile. In the same maner if the tenant in the taile cōfirme the estate of the lessee for terme of certain yeres to haue and to hold to him and to his heires, that is no discontinuance, for this that nothing passeth by such confirmation, but the estate that the tenant

nant in the taile had for terme of his life.

Also, if a tenãt in ỹ taile by his deed graunt to another al his estate that he hath in ỹ tenemẽts entailed to him, to haue & to hold all his estate to the other & to his heirs for euer, & deliuereth leisin according. In this case ỹ tenãt to whom ỹ alienation was made, hath none other estate but for terme of life of the tenant in taile, & so it may well be proued ỹ the tenant in the taile may not grant ne alien ne make any rightful estate of the franktenemẽt to an other person but for term of his owne life &c. For if I giue certaine land in the taile to a man, sauing the reuersion to me, & after the tenant in the taile enfeoffeth an other in fee, the feoffee hath no right estate in the tenements, for two causes. One is for ỹ that by such fetlement my reuersiõ is discõtinued which is a wrong act and not a rightfull act. Another cause is, if the tenaunt die, and his issue sueth a writ of Formdon against the feoffee, the writ shall say & also the declaration, that the feoffee wrongfully him deforced, therefore if wrongfully he him deforced, he had no right estate.

Also, if land be let to a man for terme of his life, the remainder to another in the tayle if he in the remainder will grant his remainder to another in fee by his deed, and the tenaunt for terme of life attourneth, this is no discontinuance of the remainder.

Also, if a mã be tenant in the tayle of auowson in grosse or of cõmon in grosse, if he by his deed

deed will grant the aduowson or the common to an other in fee, this is not discõtinuance, for in such case the grantee hath no estate but for terme of life of the tenãt in the taile that made this grant &c. Note well that such things as passe by way of graunt made by deed, made in the countrey &c. such graunt maketh no discõtinuance as in the case aforesaid, and other like cases &c. And howbeit that such be granted in fee, by fine leuied in the kings court &c. yet they make no discontinuance &c.

Also, if a man be seised in the tayle of lands deuiseable by testament &c. and he deuiseth it to an other in fee, and dieth, and the other entreth, this is no discontinuance, for this that no discontinuance was made in the life of the tenant in the taile &c.

Also, if an Abbot haue a reuersion or a rent seruice, or a rent charge, and will graunt that reuersion, rent seruice, or rent charge to another in fee, and the tenant attorneth &c. this is no discontinuance. In the same maner it is where an Abbot is seysed of aduowson or of such things that passe by way of graunt without liuery of seysin &c.

Also, if there be graundfather, tenaunt in the tayle, father and sonne, and the graundfather is disseysed by the father, and the father maketh a feoffement in fee without warrantise and dieth, and after the graundfather dieth, the sonne may well enter vpon the feoffee for this that this was no discontinuance, in

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so much that the father was not seised by force of the taile at the time of the feoffement &c. but was seised in fee by disseisin made to the grãd-father.

Also, if a woman inheritrix haue an husbãd within age, which maketh a feoffement of the tenements of the wife and dieth, it hath beene questioned if the wife may enter or not. And it seemeth to some men ỹ the entrie of the wife after the death of her husband shall be lawful in this case, for when her husband made such a feoffement &c. he might well enter notwithstanding such feoffement during ỹ couerture, and he might not enter in his owne right, but in the right of his wife &c. Ergo such right that hee had to enter in the right of his wife &c. that right of entre abideth to the wife &c. after his decease, and it hath beene said, that if two iointenants being within age, made a feoffement in fee, and one of the children dieth, & the other suruiueth, in so much that both children might enter ioyntly in their liues, this right of entre groweth all to him that suruiueth, and so may enter into the whole &c.

Also, the heire of the husbãd that made the feoffement wiñ age may not enter, for this ỹ no right descendeth to such an heire in the case aforesaid, for this that the husband had neuer any thing but in ỹ right of his wife. And also whe a child maketh a feoffement being within age, this shall neuer grieue nor hurt him but that he may well enter &c. and this should

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be against reason that such a feoffement made by him that was not able to make such a feffement shall grieue or hurt other, to toll other of their entries &c. And for these causes, it seemeth to some ỹ after the death of such an husband so being within age at the time of the feoffement &c. that his wife may well enter &c.

Also, if a woman inheretrix taketh an husband and hath issue a sonne and the husband dieth, and she taketh another husbād, and the second husband letteth the land that he hath in the right of his wife to another for terme of his life, and after the wife dieth, and after the tenant for terme of life surrendreth his estate of the second husband &c. Enquire if the sonne of the wife may enter or not, in this case vpon ỹ second husband during the life of the tenant for terme of life. But it is cleere law in this case ỹ after the death of the tenaunt for terme of life, the sonne of the wife may well enter, for this that the discontinuance that was made all onely for terme of life is determined by the death of the same tenant for terme of life &c.

Also, if the parson or vicar of a church alien certain lands or tenemēts parcel of his glebe &c. to an other in fee and dieth, or resigneth &c. his successor may well enter notwithstanding such alienation as it is said in a Note, Anno 2. H. 4. Termino Michael, quæ sic incipit. Nota quod dictum fuit pro lege. In a writ of Accompt brought by the maister of a Colledge, that if a parson or a vicar grant certaine land

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that is of the right of his church to another & dieth or chãgeth, that his successor may enter: & I trow the cause is for this, that ỹ parson or vicar ỹ is seised &c. in right of the church hath no right of the fee simple in the tenements, but the right of the fee simple therof abideth in an other person. And for this cause his successor may well enter, notwithstãding such alienation &c. for a Bishop may haue a writ of right of tenements of right of his bishoprick, for this ỹ ỹ right of fee simple abideth in him and in his chapter: and a Dean may haue a writ of right &c. for this that the right abideth in him and in his chapter, and an Abbot may haue a writ of right, for this that the right abideth in him & in his couent, & sic de alijs casib. consimilib. &c. but a parson or vicar may not haue a writ of right &c. but the highest writ that they may haue, is a writ de iur. vtrũ, the which is a great proofe that ỹ right of fee simple is in abeiãce, that is to say, al onely in the remembrance, entendment and consideration of the law, for me seemeth that such a thing in such a right that is said in diuers books to be in abeiance, is as much to say in lat. s. talis res vel tale rectũ que vel qđ non est in homiñ adtunc superstite, sed tantummodo est & consistit in consideratione & intelligentia legis &c. & quidẽ alij dixerunt talem rem aut tale rectũ fore in nubibus &c.

But I suppose that they vnderstand these words in nubibus &c. as I haue said before.

Also, if a Parson of a church die, now the frank-

frankteneme̅t of the glebe of the personage is in no man, during the time that the personage is void, but is an abeiance, that is to say, in cō-sideration and intelligence of the law till another be made parson of the same Church, and immediatly whē another is parson, the frank-tenement in deed is to him as successor.

Also, some mē peraduenture wil argue and say, that in so much ẏ the parson with thassent of the patron and ordinary, may graunt a rent charge out of ẏ glebe of his parsonage in fee, & so charge ẏ glebe of his parsonage perpetually; ergo they haue fee simple, or 2. or 1. or he hath fee simple at the least &c. to this it may be answered, that it is a principall in law, that of euery land there is a fee simple in some mā, or els ẏ fee simple is in abeiace &c. And another principal is, that euery land of fee simple may be charged with a rēt charge in fee, by one way or by another &c. and when such rent is granted by the deed of the person, the patron & the ordinary in fee, none shall haue no prejudice nor losse by force of such grant, but ẏ grantors in their liues, and the heire of the patron, and successor of the ordinary after their deceases, & after such charge if the parson die, his successor may not come to the same church to be parson of the same church by the law: but by presentment of the patron and admission and institution of the ordinary &c. And for this cause it behoueth that the successor hold him content and agreed with that which his patron and ordi-

ordinary lawfully haue done before. But the cause that such rēt charge is gone, is for this, that they which haue entries in ꝑ said church, that is to say, the patron after the law temporall, and the ordinarie after the law spirituall, were assented as parties vnto such a charge &c. and this seemeth the very cause that such glebe may be charged in perpetuity &c. See stat. 13. Eliz. cap. 20.

Also if a bishop alien lands which been parcell of his bishoprick, & dieth, this is a discontinuance to his successor, for this, that he may not enter, but is put to his writ De ingressu sine assensu capituli &c. See stat. 1. Eliz.

Also, if a Dean alien lād parcel of his deanry, and dieth, his successor may not enter, but he may haue a writ De ingressu sine assensu capituli &c. See stat. 13. Eliz. cap. 10.

But if the Dean & the chapter haue land to them and to their succes. in common &c. Howbeit that the dean alien such lands, his successors may well enter, for this that the frankstenement at ꝑ time of the alienation, was alwell in the chapter as in the deane. But where the Dean is sole seised as in right of his Deanry, then such alienation is discontinuance to his successour, as it is aforesaid. Also some men will argue and say, that if an Abbot and his couent be seised in their demeane as of fee, of certain land to them and to their successors &c. and the Abbot without assent of his Couent alieneth the same lande vnto an other,

and

& dieth, this is a discontinuance to his succes-
sors &c. & by the same they will say, that where
a Dean & a Chapter be seised of certein lād to
thē & to their successors, if the Dean alien the
same lands &c. this shalbe a discontinuance to
his successors, so that his successour may not
enter &c. To this may be answered, that there
is a great diuersity between ye said 2. cases for
when an abbot & the couent be seised &c. yet if
they be disseised, the Abbot shall haue assise in
his owne name without the naming of his co-
uent &c. And if a mā may or will sue a precipe
quod red. of the same lands whē they be in the
hands of the Abbot and his couēt it, behoueth
that such an action be sueth against the Abbot
only without naming of the couēt &c. for this,
that all they be dead persons in the law, saue
only the Abbot that is soueraigne &c. and this
is because of the soueraignety &c. for els he
should be as of the other monkes of the Co-
uent &c. But the Dean and the Chapter be no
dead persons in the law &c. For each of them
may haue an action by himself in diuers cases
and of such landes or tenementes which the
Deane and Chapter haue in commen &c. if
they be disseised, that the Deane & the Chap-
ter shal haue assise, and not the Deane alone, &
if another wil haue an action real of such lāds
or tenements against the Dean &c. it behoueth
him to sue against the Deane and Chapter,
& not against the Deane alone &c. & so appea-
reth great diuersity betweene these two cases.

Also

Also if the maister of an Hospitall discontinue certaine land of his hospital, his successor may not enter, but he is put vnto his writ De ingressu sine assensu confratrum & sororũ suarum. And all such writs do plainly appeare in the Register &c.

Remitter.

REmitter is an auncient terme in the lawe, and it is where a man hath two titles to lands or tenements, that is to say, if one of an elder title, and an other of a latter title, and he commeth to the land by the latter title, yet the law adiudged him to be in by force of the elder title, for this, that the elder title is the more sure title, and the more worthy title, and then when a man is iudged in by force of the more elder title, this is vnto him said a Remitter, for this, that the law shall admit him to be in the land by the elder title: as if the tenaunt in the tatle discontinue the taile, & after he disseiseth his discontinuee, & so dieth seised, whereby the tenements discend to his issue, as to his cosine inheritable by force of the taile: in this case this is to him to whom the tenemẽts discend which had right by force of the tail, a Remitter in the taile taken, for that, that the law shall put & adiudge him to be in by force of the taile, which is his elder title: for if he shalbe in by force of discent, then the discontinuee may haue a writ of Entre vpon the disseisin in the Per against him, & recouer the tenements, and

his dãmages, but in so much that he is in by force of the tayle, the title and the interest of the discontinuee is all vtterly annulled and defeated &c.

Also if tenant in the taile infeoffe in fee his sonne or his cosin inheritable by force of the taile, the which sonne or cosin at the time of the feoffement is within age, and after the tenant in the taile dieth, and he to whome the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffement is made: For howbeit that during the life of the tenant in the taile that made the feoffemẽt, such heire shalbe adiudged in by force of the feffemẽt, yet after the death of the tenant in the taile, ỹ heire shalbe adiudged in by force of the taile &c. and not by force of the feoffement, and though that such an heire was of full age at the time of the death of the tenaunt in the taile that made the feoffement, this maketh no matter if the heire were within age at the time of the feoffement made to him. And if such an heire being within age at the time of the feoffement cõmeth to ful age, liuing the tenant that made the feoffement, & so being of full age, he chargeth by his deed the same land with a common of pasture, or with a rent charge, and after the tenaunt in the tayle dieth. Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by another estate in the land, then he was at the time of the charge made,

made, in so much that he is in his remitter by force of the tayle, and so the estate that he had at the time of ỹ charge is vtterly defeated &c.

Also a principal cause why such an heire in the cases aforesaid, and other cases semblable shall be said in his Remitter, is for this, that there is no person against whom that he may sue his writ of Formedon, for against himself he may not sue, & he may not sue against none other, for none other is tenant in the frãktenement, and for that cause the law adiudged him in his remitter, that is to say, in such plight, as hee had lawfully recouered the same land against another.

Also, if land be tailed to a mã and his wife, and to the heires of their two bodies ingendred, the which haue issue a daughter, and the wife dieth, and the husbande taketh another, and hath issue another daughter and discontinueth the taile, and after he disseiseth the discontinuee, & so dieth seised, now the land discendeth to the two daughters: In this case as to the elder daughter that is inheritable, this is a remitter but of the halfe, & as to the other halfe, thee is put to her action of Formedon against her sister, for in this case two sisters be not tenants in parcenary, but the tenaunts in common, for this that they be in by diuers titles, for the one sister is in her Remitter by force of the tayle, as to that, that vnto her belongeth: And the other sister is in as to that that belongeth to her in fee simple by the

diſcent of her father: In the ſame maner it is if the tenant in the taile infeoffe his heire apparant in the taile, the heire being within age, and another iointenãt in fee, and the tenant in the taile dieth: Now the heire in the taile is in the Remitter, as to the halfe, and as to the other halfe he is put to his writ of Formedõ &c.

Alſo if a tenãt in the taile infeoffe his heire apparant, the heire being at ful age at the time of the feoffement, & after the tenant in the taile dieth, this is no Remitter to the heire, for this that it was his owne folly, that he being of ful age would take ſuch feoffement &c. But ſuch folly may not be adiudged in the heire being within age at the time of the feoffement &c.

Alſo if a tenant in the taile infeoffe a womã in fee and dieth, & his iſſue within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this, that the huſband & the wife be but one perſon in the law. And in that caſe the huſband may not ſue a writ of Formedon, vnleſſe he will ſue againſt himſelfe, the which ſhalbe inconuenient, and for that the lawe iudgeth the heire in his Remitter, for this, that no folly may be aretted to him being within age at the time of the ſpouſals &c. And if the heire be in his Remitter by force of the taile, it followeth by reaſon that the wife hath nothing &c. for in ſo much that the huſband & the wife be but one perſon, the land may not be ſeuered by halfes, and for ſuch cauſe the huſband is in his Remitter of the

the whole. But otherwise it is, if such an heire be of full age at the time of the spousals, then the heire hath nothing but in the right of his wife.

Also if a woman seised of certaine land in fee taketh an husband, the which alieneth the same land to another in fee, and the alienee letteth the same land to the husband and the wife for terme of their two liues, sauing the reuersion to the lessor, and to the heire, in this case the wife is in her Remitter, and shee is seised in deed in her demeane as in fee, as shee was before, for this, that the taking of estate shalbe adiudged in the law ỹ deed of the husband, and not the deed of the wife, so that no folly may be iudged in the wife that is couert in such case. And in this case the lessour hath nothing in the reuersiõ, for this that the wife is seysed in fee. But in this case if the lessour will sue an action of waste against the husband and his wife, for this that the husband hath made wast, the husbande may not barre the lessour for to shewe this, that the taking of estate made vnto him and to his wife made a Remitter to his wife, for this that the husband is stopped to say this against his feoffement and owne repvisell of estate for terme of life to him and his wife, and yet the lessour hath no reuersiõ, for this that the fee simple is in the wife. So a mã may see a matter in this case, that a man shall be estopped by a matter in deede though no writing by deede indented

ted or otherwise be thereof made. But if in an action of waste the husbande make default at the graund distresse, and the wife prayeth to be receiued, and is receiued, she shal well shew all the matter, and how shee is in her Remitter, and shal barre the lessor of his action: For in euery case that the wife is receiued for default of her husband, she shall plead and haue the same aduantage in pleading, as she were a woman sole. And howbeit that the alienee made no lease to the husband and his wife by deede indented, yet this is a Remitter to the wife, and though the alienee yeelded the same lande to the husband and his wife by fine for terme of their liues, yet this is a Remitter to the wife, for this that the wife couert that taketh estate by fine shall not be examined by the Iustices. And here note well, that when any thing shall passe from the wife that is couert of husband by force of a fine, as the husband & wife make conuiance of right to another &c. or make a grant to yeeld to another, or release by a fine to another, Et hic de similibus, where the right of the wife passeth from the wife by force of the same, the wife in all such cases shall bee examined before that the fine be accepted. And such fines conclude such wiues couert for euer. But where nothing is moued in the fine, but all onely that the husband & the wife take estate by force of the same fine, this shall not conclude the wife, for this that in such case she shalbe neuer examined.

Also

Also if tenant in the taile discontinue in the taile, & hath a daughter & dieth, & the daughter being of full age taketh an husband, and ỹ discontinuee maketh a lease of this to the husband & his wife for terme of their liues, this is a Remitter in deed to the wife, and the wife is in by force by the taile, Causa qua supra.

Also if lande be giuen to the husband & his wife, to haue and to hold to them and to the heires of their two bodies begotten, and after the husband alieneth the land in fee, & taketh againe an estate to him & to his wife for terme of their two liues. In this case this is a Remitter in deed to the husband and the wife mauger the husband, for it may not be a Remitter to the wife, except it bee a Remitter to the husband, for this that the husbād and his wife be but one person in the law, though that the husband is stopped to claime this to be a Remitter in him against his alienation, and his owne reprisell, as is aforesaid.

Also if lande bee giuen to a woman in the taile, the remainder to an other in the taile, the remainder to the third in the taile, the remainder to the fourth in fee, and the wife taketh on husband, & the husband discōtinueth the land of his wife, by this discōtinuance al ỹ remainders be discontinued, for if the wife die wōout issu, they in ỹ remainder shall haue no remedy, but to sue their writs of Formedon in the remainder whē they come to their time &c. But if after such discontinuance, estate be made to

the husband and his wife for terme of their two liues, or for terme of an other lyfe, or an other estate &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder &c. For after this that the wife, that is in her Remitter, dieth without issue, they in the remainder may enter &c. without any action or suit &c. In the same manner it is of them which haue the reuersion after such tayle &c.

Also, if a man let a house to a woman for terme of her lyfe, sauing the reuersion to the lessour, and after one sueth a faint and false action against the woman, and recouereth the house against her by default, so that the woman may haue against him a writ of Quod ei deforceat, after the statute of Westm. the second cap. 4. now is the reuersion of the lessour discontinued, so that hee may haue no action of waste. But in this case if the woman take an husband, and he that recouereth letteth the house to the husband and his wife for terme of their two liues, the wife is in her Remitter by force of the first lease. And if the husbande and the wife make waste, the first lessour shall haue against him a writte of waste for this, that in so much that the wife is in her Remitter, he is remitted to his reuersion. But it seemeth in this case, if he that here cōmeth by the false action, will bring an other writte of waste against the husband and his wife, the husband hath no remedie against him,

him, but to make default at the great distresse &c. And to cause the wife to bee receyued and to plede the matter against the second lessour, and to shew that the action by whuh he recouered was false and fayned in the law, and so the wife may barre &c.

Also, if the husband discontinue the land of his wife, and after taketh estate to him and to his wife, and to the thirde man for terme of their lines, or in fee, this is a Remitter to the woman but as to the moitie. And as for the other moitie it behooueth her after the death of her husband to sue a Cui in vita.

Also if the husband discontinue the land of his wife, and go ouer the sea, and the discontinuee let the same land to the woman for terme of lyfe, and deliuer to her seysin, and after the husband commeth and agreeth to that liuery of seysin, this is a remitter to the woman, and yet if the woman had beene sole at that tyme of her lease made to her, this should bee to her a Remitter, but in so much as she was couert baron, at the time of the lease, and the liuerie of seisin made to her, though that she only take the liuery of seysin, this was a Remitter to her, because a woman couert shalbe adiudged as an infant within age in such case &c. Enquire in this case if the husbād when he commeth againe wil disagree to the lease and liuery of seysin made to his wife in his absence, if this shal put the woman from her Remitter.

Also if the husband discontinue the tene-

ments

ments of his wife, and the discontinuee is disseised, and after the disseysor letteth the saide tenemēts to the husband & his wife for terme of life, this is a remitter to the wife, but if the husband and the wife were of couin or consent that the disseisin should be made, then it is no Remitter to the wife, because she is a disseysouresse. But if the husband were of couin & consent to the disseisin and not the wife, then such lease made to the wife is a Remitter, because that no default was in the wife.

Also, if such a discontinuee had made estate of freehold to the husband and the wife, made by indenture vpon condition. s. reseruing to the discontinuee a certein rent, and for default of paiment a reentre, and because, that the rent is behind the discontinuee entreth, of this rent the womā shal haue assise of nouel disseisin, after the death of her husband against ye discontinuee, because that the condition was wholly adnulled, in so much as the womā was in her remitter, yet the husband with his wife could not haue assise because the husbād is stopped.

Also, if the husband discontinue the tenements of his wife, and taketh estate against for terme of his life, the remaynder after his decease to his wife for terme of her lyfe, in this case this is no Remitter to the wyfe during the lyfe of her husband, beecause that during the lyfe of the husband, the wyfe hath nothing in ye freehold, but if in this case the wife ouerliue the husband, this is a Remitter

to

to the wife, because that a freehold in lawe is fallen vpon her maūger her will, & in so much that she can haue no action against none other person, and against her selfe shee can haue no action, therefore she is in her Remitter, for in this case though that the woman enter not the tenements, yet a stranger that hath cause to haue action may sue his action against the woman of the same tenements, because she is tenant in law, though shee be not tenaunt in dede, for tenant of franktenement in deed is she, that if he be disseised of franktenemēt may haue Assise, but the tenant in the lawe before his entre shall haue no assise, & if a man seysed in fee of certaine land hath issue a sonne which taketh a wife, and the father dieth seised, and after the sonne dieth before any entre made by him into the land, the wife of the sonne shalbe endowed in the land, & yet he had no franktenemēt in deed, but he had a fee & a franktenement in law, & so note well ỹ a Præcipe quod reddat may be as wel maintained against him that hath the franktenemēt in law, as against him that hath franktenement in deed.

Also if a tenaunt in the taile haue issue two sonnes of full age, and hee letteth the tayled lande to the elder sonne for terme of his life, the remainder to the yonger sonne for term of his life, and after the tenant in the taile dieth. In this case the elder son is not in his remitter, because he tooke estate of his father, but if the elder sonne die wout issue of his body, then this

this is a remitter of ỹ yonger brother, because he is heire in the taile, and a franktenement in law is fallen vpon him by force of the remainder, and there is none against whom he may sue his actiõ &c. In ỹ same maner it is where a man is disseised, and the disseisor dieth thereof seised, and the tenementes discend to his heire, and the heire of the disseisor maketh a leas to a man of the said tenements for terme of life, the remainder to the disseisee for terme of life or in taile, or in fee, and the tenaunt for terme of life dieth, now this is a Remitter to the disseisee &c. Causa qua supra.

Also if a tenant in the taile enfeffe his sonne and an other of the tayled land in fee, and liuery of seisin is made to the other according to the deede, the sonne not knowing thereof, nor agreeing to the feoffement, and after he that tooke the liuery of seisin dieth, and the sonne occupieth not the land, nor taketh any profite of the lande during the life of his father, and after the father dieth, now this is a Remitter to the sonne, because the freehold is fallen vpon him by the surmuor, and no default was in him, because he neuer agreed &c. in the life of his father, and there is none against whõ he may pursue his writ of Formedone &c. For if a man be disseised of certaine land, and the disseisor maketh a deed of feoffement, whereof he enfeoffeth B. C. and D. and the liuery of seisin is made to B. and C. but D. was not at the liuery of seisin, nor neuer

agreed

agreed to the feoffemēt, nor neuer would take the profits &c. And after B. & C. die, and D. ouerliueth them, and the disseisee bringeth his writ sur disseisin in the Per, against ꝑ same D. he shall shew all the matter, and how that he neuer agreed to the feoffement, and so he shall discharge himselfe of damages, so that the demandāt shall recouer no damage against him, though that he be tenant of franktenement of the land. And yet the statute of Glocester wil, that the disseisee shal recouer damage in a writ of entre, grounded vpon the nouel disseisin against him that is found tenant. And this is a proofe in the other case, that in so much as the issue in the taile commeth to the franktenemēt not by his deed, nor by his agreement, but after the death of his father, this is a Remitter to him, in so much that he can sue an action of Formedon against none other person.

Also if an Abbot alien the land of his house to another in fee, and the alienee by his deed chargeth the land with a rent charge in fee & after the alienee enfeoffeth the Abbot with licence, to haue and to holde to the Abbot and his successours for euer, and after the Abbot dieth, and another is chosen and made Abbot: In this case the Abbot that is successor & his couent be in their Remitter, and shal hold the land discharged, because that the same Abbot cannot haue an action by his writ of Entre sine assensu Capituli, of the same lāds against none other person. In the same manner it is

where

where a Bishop or dean, or other such person alien &c. without assent &c. And after the Bishop taketh estate againe of the same lande by licence to him, and to his successors, and after the Bishop dieth, his successor is in his Remitter as in the right of his church, and shall defeat the charge &c. Causa qua supra.

Also, if a man sue a false action against tenant in the taile, as if a man will sue against him a writ of entre in the Post supposing by his writ that the tenaunt in the tayle had not his entrie but by A. of B. that disseised the graund father of the demaundant, and that is false, and he recouereth against the tenaunt in the tayle by default, and sueth execution, and after the tenant in the taile dieth, his issue may haue a writ of Formedon against him that recouered, and if hee will pleade the recouery against the tenaunt in the taile, the issue may say, that the said A. of B. disseised not the graund father of him that recouered in such maner as his writ supposeth, and so he shall satisfie his recouery. Also, suppose that that was true, that the said A. of B. disseised the graund father of the demandant that recouered, and that after the disseisin the demandant or his father, or his graund father by a deed had released to the tenaunt in the taile, all the right that he had in the land &c. And this notwithstanding he sueth his writte of entre in the Post against the tenant in the tayle, in the manner as is aforesaid, and the tenaunt in the

taile

tayle pleadeth to him, that the said A. of B. disseiseth not his graundfather, as his writ supposeth: and vpon this they be at issue, and the issue is founde for the demaundant, whereby he hath iudgement to recouer and sueth execution, and after the Tenaunt in the tayle dyed, his issue may haue a writte of Formedon agaynst him that recouered. And if he will plead the recouery by action tried against his Father tenaunt in the tayle, then he may shew and plead the release made to his Father, and so the action that was sued was faint in the law &c.

¶ And it seemeth that faint action is as much to say in English, as fayned action that is to say, such action, that though the wordes of his writ be true, yet for certaine causes hee hath no cause nor title by the lawe to recouer by the same action. And false action is, where the wordes of the writ be false: and in the twoo cases before saide, if the case were such that after such a recouerie and execution thereof made, the tenant in the tayle had disseysed him that recouered, and thereof died seised, whereby the lande also discended vnto his issue, this is a remitter to the issue, and the issue is in by force of the tayle: and for that cause I haue put these twoo cases aforesayd, to informe thee (my sonne) that the issue in the tayle by force of a discent made to him after a recouerie and execution thereof made against his auncester, may be as well in his remitter,

as

as he should be by discent made to him after a discontinuance made by his auncester of the tailed land by feoffement in the countrey, or otherwise.

Also, in the same case aforesaid, if the case were such, that after the demandant had iudgment to recouer against the tenant in tail, and the same tenant in the tail died before any execution had against him, whereby the tenements discend to his issue, and he that recouered sued a Scire facias to haue execution of the iudgement against the issue in the tatle, the issue shal plead the matter, as before is said, and so shall proue that the recouery was false or faint in the law, and so shall barre him to haue execution of the iudgement &c.

Also, if the tenãt in the taile discontinue the taile and die, and his issue bringeth a writ of Formedon against the discontinuee beyng tenant of the freehold of the land, & the discontinuee pleadeth that he is not tenant, but otherwise disclaimeth from the tenancy in the land: in this case the iudgement shalbe, that the tenant goe without day, & after such iudgement the issue in the tatle ỹ is demandant may well enter in the land, notwithstanding the discontinuance. And by such entre he shalbe adiuged in his Remitter, & the cause is, because that if any man sue a Præcipe quod red. against any tenant of freehold, in which action the demandant shal not recouer damages, and the tenãt pleaded not Nõtenure, but otherwise disclaymeth

meth in the tenancy, the demaundant may not auerre in the writ, that he is tenant as ỹ writ suppoſeth. And for that cauſe the demandant after that the iudgement is giuen, that the tenaunt ſhall goe without day, may enter into the tenements demaunded, the which ſhall be as great aduantage to him in the law, as if he had iudgement to recouer againſt the tenant. And by ſuch entre hee is in the Remitter by force of the taile: but where the demandant recouereth dammages againſt the tenant, there the demaundant may auerre that he is tenant as the writ ſuppoſeth, and that for the aduantage of the demaundant for to recouer his dãmages, or els he ſhal not receiue his dãmages the which dammages be or were giuen him by the law.

Alſo, if a man be diſſeiſed, and the diſſeyſour die his heire being in by diſcent, now the entre of the diſſeiſee is taken away. And if the diſſeiſee bring his writ of entre vpon the diſſeiſin in the Per againſt the heire, & the heire diſclaimeth in the tenancy &c. the demaundant may auerre his writ that he is tenaunt as the writ ſuppoſeth if he will, for to recouer his dãmages. But yet if he will leaue the auerment &c. he may lawfully enter into the lãd, because of the diſclaimer notwithſtãding that his entre before was taken away. And that was adiudged before my Maiſter ſir Robert Danby late chiefe Iuſtice of the common place, and his Companions. 5. E. 4. fol. 1. & 45.

Also, where the entre of a man is lawfull, though that hee take estate to him when he is of full age for terme of life, or in tatle, or in fee, this is a Remitter to him, if such taking of estate bee not by deed indented, or by mater of record that shal conclude or stop him: For if a man be disseised, & thereof taketh estate of the disseisor without deed, or by deed Poll, that is a good Remitter of the disseisee.

Also, if a man let land for terme of life to an other which alieneth to another in fee, & the alienor maketh estate to ỹ lessor, this is a remitter to the lessor, because his entre was lawfull.

Also, if a man be disseised, and the disseisor letteth the land to the disseisee by deed Poll, or without deed for terme of yeeres, whereby the disseisee entreth, this entre is a Remitter to the disseisee: for in such case where the entre of a man is lawfull, & a lease is made to him, though that he claime by wordes in the countrey, that he hath estate by force of such lease, or saieth openly that hee claimeth nothing in the land, but by force of such lease, yet this is a Remitter to him, for such claime in the countrey is nothing to purpose: but if he claime in a court of Record that he hath estate but by force of such leas and not otherwise, then he is concluded &c.

Also, if two tointenaunts seysed of certaine land in fee, the one being of full age, the other within age be disseised, and the disseisor dieth seised and his issue entreth, the one of the toin-

iointenants being then within age, and after that he commeth to ful age, the heire of the disseisor letteth the land to the same iointenants for terme of their liues, this is a Remitter as to the halfe to him that was within age, because that he is seised of the moity that belongeth to him in fee, because his entre was lawful. But the other iointenant hath in the other halfe but estate for terme of life by force of the lease, because his entre was taken away &c.

Warrantie.

IT is commonly said that there be three maner of warranties, that is to say, warranty lineall, warranty collaterall, and warranty that beginneth by disseisin. And it is to weete that before the Statute of Gloucester all warranties which discended to them which were heires to them that made the warranty, were bars to the same heires to demand any lands or tenements against those warranties, except the warranties that began by disseisin, for such warranty was neuer bar to the heire because the warranty began by wrong, that is to say, by disseisin.

Warranty that beginneth by disseisin is in such forme: as where there is father & sonne, & the sonne doth purchase land &c. and letteth the same land to his father for terme of yeres, & the father by his deed thereof enfeoffeth another in fee, and bindeth him and his heires to

warranty, & if the father die whereby the warranty discendeth to his son, this warrãty shall not bar the son, for notwithstanding this warrãty, the son may wel enter into the land, or haue an assise against the alienee if he will, because the warranty began by disseisin. For when ỹ father that had no estate but for term of yeres made a feoffement in fee, this was a disseisin to the son of the franktenement that then was in the son. In the same maner it is if the son let vnto the father the land to hold at will, and after the father maketh a feoffemẽt with warranty &c. And as it is said of the father so may it be said of euery other auncestor &c.

In the same maner it is if tenant by Elegit, tenant by statute marchant, or tenaunt by statute staple, maketh a feffement in fee with warranty &c. this shal not barre the heire that ought to haue the land because that such warranties begin by disseisin.

Also if a wardẽ in chiualry or warden in socage make a feffement in fee, in fee taile, or for term of life with warrãty &c. Such warrãties be no bars to the heirs to whom the land shal discend, because that they begin by disseisin.

Also, if the father & the sonne purchase certaine lands or tenements, to haue and to hold to them iointly &c. and after the father alieneth the whole to another and bindeth him & his heirs to warranty &c. and after the father dieth, this warranty shall not barre the son of the moity that belongeth to him of ỹ same tenements

nemēts, because ỹ as to the motty ỹ belonged to the son, the warranty began by disseisin.

Also, if A. of B. be seised of a mease, and F. of G. ỹ hath no right to enter in the same mese clayming to hold the same mese to him and to his heires, enter into the same mese, but A. of B. then is continually dwelling in the same mese, in this case the possession of the frankte-nement shalbe alway adiudged in A. of B. & not in F. of G. because that in such case where two be in one mese, or in other tenements, & ỹ one claymeth by one title, and the other by an other title, the law shall adiudge him in posses-sion ỹ hath right to haue the possession of the same tenement. But in the case aforesaid if F. of G. make a feoffement to certain barretours and extortioners in the countrey for to haue maintenance of them of the same mease by a deed of feoffement with warranty, by force of which the said A. of B. dare not dwell in the same mese, but goeth out of the same mese, this warranty beginneth by disseisin, because that such a feoffement was cause that the said A. of B. left the possession of the same mese.

Also, if a man that hath no right to enter in anothers tenements, enter into the said tene-ments, and incontinently maketh a feoffe-ment to other persons by his deede with war-ranty, and deliuereth to them seisin, this war-ranty beginneth by disseisin, because that the disseisin and the feoffement were made as it were at one time. And that this is law, ye

may see it in a plee. Anno 31. Ed. 3. in a writ of Formedon in the reuersion Garr. Fitz. 28.

Warranty lineall is where a man seised of certaine lands in fee maketh a feoffement by his deed to another, and bindeth him and his heirs to warranty, and hath issue & dieth, and the warranty discendeth to his issue, this is a lineal warranty. And the cause why this is a lineall warranty, is not because ỹ the warrãty discendeth from the father to his heire, but the cause is, because ỹ if no such deede with warranty had beene made by the father, then the right of the tenements should discend to the heire, and the heire should conuey the discent from the father &c. For if there be father and sonne, and the sonne purchase tenements in fee, and the father disseiseth the sonne thereof and alieneth it to another in fee by his deed, and by the same deede bindeth him and his heires to warrant the same tenementes and so forth, and the father dieth, now is the sonne barred to haue the said tenements, for he may by no suite nor by any other meanes haue the said tenements, because of the said warranty. And that is a collaterall warranty, and yet the warranty discendeth lineally from the father to the sonne. But because that if no such deede with warrantie had beene made, the sonne in no maner might conuay the title that hee hath of the tenements from his father to him, in so much that his father had no estate nor right in the tenemẽts, therefore

fore such warranty is called collaterall warrantie: In so much that he that made the warranty is collateral to the title of the tenemēts, and that is as much to say, that hee to whom warranty discended, could not conuey the title that he had in the tenements by him that made the warrāty in this case, if no such warranty had bin made.

Also, if there be graundfather, father, and sonne, & the graundfather is disseised, in whose possessiō the father releaseth by his deed with warranty &c. and dieth, and after the graundfather dieth, now is the sonne barred of the tenements by the warranty of his father, & this is called lineall warranty, because that if no such warranty had bin made, the sonne might not haue conueyed the right of the tenements to him, nor shew how he is heire to the graūd father, but by meanes of the father &c.

Also, if a mā haue issue three sonnes and is disseysed, and the elder sonne releaseth to the disseisor by his deede with warrantie &c. and dieth without issue, and after this the father dieth, this is a lineall warrantie to the yonger sonne, because that though ỹ elder sonne died in the life of the father, yet by possibilitie it might bee that he might conuey to him the title of the land by his elder brother, if no such warranty had bin made: For it might be that after the death of the Father, the elder brother entred into the tenementes and died without issue, and then the yonger sonne shall conuey

to him the title by his elder brother. But in this case, if the yõger son release with warranty to the disseisor, and dieth without issue, this is a collaterall warrãty to the eldest sonne, because ỹ of such land as was to the other, the elder brother by no possibility might cõuey to him the title by meane of the yonger brother.

Also, if the tenãt in the tatle hath issue three sonnes, and discontinue the tatle in fee, and the middle sonne releaseth by his deede to the discontinuee, & bind him and his heires to warrantise &c. and after the tenant in the tatle die, and the middle dieth without issue, now is the elder sonne barred to haue any recouerie by a writ of Formedon, because that the warranty of the middle brother is collateral to him, in so much that he may by no manner cõuey to him by force of the tayle any discent by the middle brother, and therefore it is a collaterall warranty. But if in this case the elder brother die without issue, now the yoonger brother may wel haue a Formedon in the discender, & recouer the same land, because that the warranty of the middle brother is lineall to the yonger brother, because it may be, that by possibilitie the middle brother may bee seysed by force of the tatle after the death of his elder brother, & then the yongest brother may conuey his title of discent by the middle brother &c.

Also, if the tenant in the tail discontinue the tatle, & hath issue and die, and the vncle of the issue release to the discõtinuee with warranty

and

and die without iſſue, this is a collateral warranty to the iſſue in the tayle, becauſe that the warrantie diſcendeth vpon the iſſue, which cannot conuey himſelfe to the tayle, by meane of his vncle.

Alſo, if the tenant in the tayle hath iſſue two daughters and die, and the elder daughter entreth into the whole, & thereof maketh a feoffement in fee with warranty, and after the elder daughter dieth without iſſue: In this caſe ỹ yonger daughter is barred, as to the mottie, & as to the other half ſhe is not barred, for as to the motty that belõgeth to the yonger daughter, ſhe is barred, becauſe that as to the motty that belongeth to her, ſhee cannot conuey the diſcent by the meanes of her elder ſiſter. And therefore as to the motty, that is collaterall warranty, but as to the other motty which belongeth to her elder ſiſter, by the ſame elder ſiſter the warranty is no barre to the yonger ſiſter, becauſe that ſhe may conuey her diſcẽt as to that motty that belongeth to her elder, by the ſame elder ſiſter: And ſo as to that motty that belongeth to the elder ſiſter, the warrantie as to that is lineall to the yonger ſiſter.

And note well, that as to him that demaundeth fee ſimple by any of his auncеſters, hee ſhalbe barred by lineall warranty which diſcendeth vpon him, except it bee reſtrained by ſome ſtatut, but he which demandeth fee taile by a writ of Formedon in the diſcender, ſhall not be barred by lineall warrantie, except he

haue

haue ynough by diſcent in fee ſimple by the ſame auncеſter that made the warranty, but a collateral warranty is a barre to him that demaundeth fee, and alſo to him that demandeth fee tayle, without any other diſcent of fee ſimple, except in caſes that bee reſtrained by the ſtatute, and other caſes for certaine cauſes, as ſhalbe ſaid hereafter.

Alſo, if land be giuen to a man and to his heires of his bodie begotten, the which taketh a wife, and haue iſſue a ſonne betweene them, and the huſband diſcontinueth the taile in fee, and dyeth, and after the wife releaſeth to the diſcontinuee in fee with warranty and dieth, and the warranty diſcendeth to the ſonne, this is a collateral warranty. But if tenements be giuen to the huſband and the wife, and to the heires of their two bodies begotten, which haue iſſue a ſonne, & the huſbād diſcontinueth the taile, & dieth, and after the wife releaſeth with warranty & dieth, this warranty is but a lineal warranty to the ſon, for the ſonne ſhal not bee barred in this caſe to ſue his writ of Formedon, except he haue inough by diſcēt in fee ſimple by his mother, becauſe that their iſſu in a writ of Formedon ought to conuey to him the right as heire to his father and to his mother of their two bodies begotten, by forme of the gift. And ſo in ſuch caſe the warrantie of the father, and the warranty of the mother, be but as lineal warranties to the heire &c. And note well, ẏ in euery caſe where a man demandeth

deth tenements in fee taile by a writ of Formedone, if any of the issues in the tayle that had possession or that hath possession, make a warranty &c. if he that sueth the writ of Formedon might by any possibility by matter that might be in deed comuey to him by him that made the warranty by the forme of the gift. This is a lineall warranty, and not collaterall.

Also, if a man haue issue three sonnes, and he giueth land to the eldest sonne, to haue and to holde to him and to the heires of his body begotten, and for default of such issue the remainder to the middle sonne, to him, and to the heires of his body begotten, and for default of such issue the remainder to the yongest sonne, and to his heires of his body begotten, in this case if the eldest sonne discontinue the taile in fee, and binde him, and his heires to warranty, and die without issue, this is a collaterall warranty to the middle sonne, and he shall be barred to demaund the same lande by force of the remainder, because that the remainder is his title, and his eldest brother is collaterall to the title which beginneth by force of the remainder.

In the same maner it is if the middle sonne had the same lande by force of the remainder, because that his eldest brother made no discõtinuance, but dieth without issue of his body, and after the middle sonne maketh a discontinuance with warranty &c. and dieth without issue, this is a collaterall warranty to the

yongest

yongest sonne, & also in this case if any of the said sonnes bee disseised, and the father that made the gift release to the disseisour all his right &c. with warranty, this is a collaterall warranty to the sonne vpon whom the warranty discended, Causa qua supra. And so note wel that where a man that is collateral to the title &c. releaseth with warranty, that is a collaterall warranty.

Also, if the Father giue lande to his elder sonne, to haue and to holde to him and to his heires males of his body begottē, the remainder to the second sonne &c. if the eldest brother alien in fee with warranty &c. and hath issue female & dieth without issue male, this is not a collateral warranty to the second sonne, nor shall not hurt him of his action by Formedon in the remainder, because that the warrantie discendeth to the daughter of the eldest sonne, and not to the second sonne. For euery warranty that discendeth, discendeth to him that is heire vnto him which made the warranty by the common law &c.

Also, if land be giuen to a man and to his heirs males of his body begotten, and for default of such issue the remainder thereof to his heires females of his body begotten, and after the donee in the tayle maketh a feoffement in fee with warranty according, and hath issue a sonne & a daughter and dieth, this warranty is but a lineal warranty to the sonne, to demaund by writte of Formedone in the discendre,

cendre. And it is but lineall to the daughter to demaund the same land by writ of Formedon in the remainder, if her brother die without heire male, because that shee claimeth as heire female of the body of her father begotten. But in this case if her brother in his life release to the discontinuee with warranty &c. and after die without issue, this is a collaterall warranty to the Daughter, because that shee cannot conuey to her the right that she had by force of the remainder by any meane of discent by her brother, and therfore the brother is collateral to the title of his sister, and therefore his warranty is collaterall &c.

Also, I haue heard say that in the time of king Richard the second, there was a Justice in the common place dwelling in Kent, called Rickhil, that had issue diuers sonnes: and his intent was, that his eldest sonne should haue certaine lands to him and to his heires of his body begotten, and for default of issue, the remainder to his second sonne and so forth, and so the third sonne &c. and because that he would that none of his sonnes should alien or make warranty for to barre or to hurt the other that should bee in the remainder &c. he causeth to be made an indenture to such effect, that is to say, that the landes and tenements were giuen to his eldest sonne vpon this condition, that if the eldest sonne aliened in fee or in fee taile &c. or any of his sons aliened &c. that then their estate should cease & should be

void

voide, and that then the said landes or tenements immediately should remaine to the second son, and to the heires of his body begotten, and that vpon the same condition. s. that if the second son alien &c. that then his estate should cease, & that then the same landes & tenemẽts should remain to the third sonne, and to the heires of his body begotten &c. the remainder to other of his sons, & liuery of seisin was made according. But it seemeth by reason that all such remainders in the forme beforesaid be void, and of no valew, and that for three causes. One cause is because euery remainder that beginneth by a deed, it behoueth that the remainder be in him to whom the remainder is tailed by force of the same deede when the liuery of seisin is made to him that hath the frankstenement.

And such remainder was not to the second sonne at the time of liuery of seisin in the case before said &c.

The second cause is, if the first sonne alien the tenements in fee, then is the frankstenement and the fee simple in the alienee and in none other, and if the donour had any reuersiõ by such alienation, the reuersion is discontinued, then though that by some reason it may be that such remainder shall beginne his being and his growing immediatly after such alienation made to a straunger, that hath by the same alienation frankstenement and fee simple, and also if such remainder should

be

be good, then might he enter vpon the alienee where he had no maner of right before ỹ alienation, which should be inconuenient. The 3. cause is, when the condition is such that if the eldest son alien &c. that his estate shal cease, or shall be void &c. then after such alienation &c. may the donor enter by force of such condition &c. as it seemeth, and so the donor or his heirs in such case ought more sooner to haue ỹ land, then the second sonne that hath no right before such alienation &c. and so it seemeth that such remainders in the case aforesaid be void.

Also, at the common law before the statute of Glouceſter, if the tenaunt by curteſie had alened in fee with warrantie accordaunt, after his deceaſe this was a barre to the heir &c. as it appeareth by the wordes of the same statute: But it is remedied by the same statute that the warranty of the tenant by the curteſie shall bee no barre to the heire, except hee haue ynough by diſcent by the tenaunt by the curteſie, for before the said estatute that was a collaterall warrantie to the heire, because hee coulde not conuey any title of diſcent to the tenements by the tenaunt by the curteſie, but onely by his mother or other of his aūceſtors &c. and that is the cause why it was collateral warranty. But if a man enheriter, take a wife, which haue iſſue a ſonne betweene them and the father dieth, & the ſonne entreth into the land, and endoweth his mother, and after his mother alieneth that that ſhee hath in her

dower

dower to another in fee, with warranty according, and after dieth, and the warranty discendeth to the sonne, now the sonne shall bee barred to demaund the same land because of the said warrantie, because that such collaterall warrantie of tenant in dower is not remedied by any statute. The same law is wher tenant for terme of life maketh an alienation with warranty &c. and dieth, and the warrantie discendeth to him that had the reuersion or the remainder &c. they shall be barred by such warrantie &c.

Also, in the said case if it so were, that when the tenaunt in dower alieneth &c. the heire was within age, and also at that time that the warranty discendeth vpon him, he was within age, in this case the heire may after enter vpon the alienee notwithstanding the warranty discended &c. because that no laches shal be adiudged in the heire within age, that hee entred not vpon the alienee in the lyfe of the tenaunt in dower, but if the heire was within age at the time of the alienation, and after he came to full age in the life of the tenaunt in dower, and so beyng of full age, be entred not in the lyfe of the tenaunt in dower, and after the tenant in dower dieth, there peraduenture the heire shalbe barred by such warranty becaus it shall be accounted his folly that he beyng of full age, entred not in the life of the tenant in dower &c.

Also, it is spoken in the ende of the sayd estatute

eſtatute of Glouceſter, that ſpeaketh of the alienation with warranty made by the tenant by the curteſie in ſuch forme.

Alſo, in the ſame maner the heire of the woman after the death of his father and mother ſhall not be barred of action, if he demaund the heritage or ye mariage of his mother by a writ of entre that his father alienedin the time of his mother, whereof no fine is leuied in the kings court &c. And ſo by force of ye ſame ſtatute if the huſband of the wife alien the heritage or mariage of his wife in fee with warranty &c. by his deede in the countrey, this is cleere law that this warranty ſhal not bar the heire, except he haue ynough by diſcēt &c. But the doubt is, if that the huſband alien the heritage of his wife by fine leuied in the kings courts with warranty &c. if this ſhal barre the heire without any diſcent in value &c. And as to that I will ſay here certaine reaſons that I haue heard ſay in this matter. I heard my maſter ſir Richard Newton late chief Iuſtice of the common place ſay once in the ſame place that ſuch warranty that the baron maketh by fine leuied in the kings Court, ſhall barre the heire, though that he haue nothing by diſcent, becauſe the ſtatute ſaith, whereof no fine is leuied in the kings court &c. And ſo by his opinion, this warranty by fine &c. abideth yet a collaterall warranty, as it was at the common law not remedied by the ſaid eſtatute, becauſe that the ſaid eſtatute acceptech the alie-

nation by fine with warranty. And some other haue said & yet say the contrary, & this is their proofe, that as by the same chaptter of the said estatute is ordeined, that the warrantie of the tenaunt by the curtesie shall not barre the heire, except he haue ynough by discent &c. though that the tenant by the curtesie leute a fine of the same lands with warrantie &c. as strongly as he can, yet this warrantie shal not barre the heir, except he haue assets or ynough by discent &c. And I beleeue that this is law, and therefore they say, that it should be inconuenient to vnderstand the statut in such forme that a man ỹ hath not but in the right of his wife, may by fine leuied by himselfe of the tenements that hee hath but in right of his wife with warrantie &c. barre the heire of the said tenements without discent of the fee simple &c. where the tenant by the curtesie cannot do it. But they haue said, that the statute shall be vnderstood after this forme, that is to say, where the Statute speaketh, whereof no fine, is leuied in the Kings Court, that is to say, whereof no lawfull fine is rightfully leuied in the same kings Court, and that is, wherof no fine of the husband and his wife is leuied in the kings court, for at the time of the making of the said statute, euery estate of lands or tenementes that any man or woman had that should discende to his heire, was fee simple without condition or vpon condition in deede or in Law. And because that such fine then might

might lawfully haue bin leuied by the husbād and his wife, and that if the heires of the husband warrant &c. such warranty shall barre the heire &c.

And so they say that this is the vnderstanding of the said statute, for if the husband and the wife made a feoffement in fee by deede in the countrey, the heire after the decease of the husband & the wife shall haue a writ of Entre sur cui in vita &c. notwithstāding the warrāty of the husband: Then if no such exception was made in the statute of the fine leuied &c. then the heire should haue the writ of Entre &c. notwithstanding the fine leuied by the husband and the wife, because that the words of the statute before the exception of the fine leuied &c. be generally &c. that is to say, that the heire of the woman after the death of her husband and the wife, shall not be barred of action, if he demand the heritage or the mariage of his mother by a writ of Entre, that his father attened in the time of his mother, and so it should be in ỹ case of the statute, except such words were, that is to say, whereof no fine is leuied in the kinges Court: and so they say, that this is to be vnderstood, whereof no fine by the husband & the wife is leuied in ỹ kings Court, the which is lawfully leuied in such case: for if ỹ Justices haue knowledge ỹ a mā ỹ hath nothing but in ỹ right of his wife, will leuy a fine in his name onely, they will not, nor ought not to take such fine to be leuied by the

husband only without naming the wife, therefore inquire of this matter.

Also, it is to wit, that in such words where the heire demaundeth the heritage or mariage of his mother, this word (where) is a disiunctiue, and is as much to say, if the heire demand the heritage of his mother, that is to be vnderstood the tenemẽts that his mother had in fee simple by discent, or by purchase, or if the heire demand the mariage of his mother, that is to say, the tenements that were giuen vnto his mother in frankmariage.

Also, where it is moued in diuers deedes these words in Latine, Ego & hæred. mei &c. warrãtisabimus, & inperpetuum defendemus, it is to see what effect hath that word Defendemus in such deeds: & it seemeth that it hath not the effect of warrantise, nor comprehẽdeth any clause of warrantise, for if it should be so ỹ it taketh effect or cause of warrantise, then it should be put in some fines leuied in ỹ kings Court. And a man neuer saw that this word Defendemus was in fine, but onely this word Warrantizabimus, by which it seemeth ỹ this verbe Warrantizo maketh warranty, and is the cause of warrantise, and none other word in our law.

Also, if Tenaunt in the taile be seised of tenements deuisable by testament after the custome &c. and the Tenant in the taile alieneth the tenements to his brother in fee, and hath issue and dieth, and after his brother deuiseth

by

by his testament ꝯ same tenements to another in fee, & bindeth him and his heires to warrãtise &c. and dieth without issue, it seemeth that this warranty shall not barre the issue in the taile, if he will sue his writ of Formedon, because that the warranty discended not to the issue in the taile, in so much as the vncle of the issue was not bound by force of the same warranty in his life. And the cause ꝯ he could not warrant ꝯ land in his life, is in so much that the deuise could not take any execution or effect but after his decease, & in so much that the vncle in his life was not holde to warranty, such warrantise may not discend from him to ꝯ issue in the taile &c. for nothing may discend from the auncestor to his heire, but the same that was in the auncestor. Also a warranty may not go after the nature of tenements by custome, but onely after the forme of ꝯ cõmon law. For if tenant in tail be seised of tenemẽts in borough english, where the custome is, that all tenements of the same borough, ought to discend to the yongest son, & he discontinueth the taile with warranty &c. and hath issue 2. sons & dieth seised of other lands & tenements in the same borough in fee simple to the valew and more of the tenements tailed &c. yet the yongest sonne shal haue a Formedon of the tenements tayled, and shall not be barred by the warrantise of his father, though inough to him discended in fee simple from the same father after the custome, for this that the war-

ranty discendeth vpon the elder brother that is in full life &c. and not vpon the yongest son. In the same maner it is of collateral warrantise made of such tenements where the warrãtise discendeth to the elder sonne &c. this shall not barre the yonger son &c. In the same maner it is of tenements in the Shire of Kent, which is called Gauelkind, the which tenements be departable among ỹ brethren &c. after the custome &c. if any such warranty bee made by their auncestors, such warranty discendeth all onely to the heire ỹ is heire by the common law, & not to all the heires which are heirs of such tenements after the custome &c.

Also, if tenaunt in the tatle haue issue two daughters by diuers venters and dieth, and the daughters enter, and a stranger disseiseth them of the same tenements, and one of the daughters releaseth by her deed to the disseysor al her right, and bindeth her and her heirs to warrantise and dieth without issue, in this case the sister that suruiueth may well enter & put out the disseisor of all the tenements, for this that such warrantise is no discontinuance, nor collaterall warrantise to the sister ỹ suruiueth, for this that they be of halfe bloud, and the one may not be heire to the other after the common law. But otherwise it is where there be daughters of tenaunts in the tayle by one venter.

Also, if tenant in the tayle let tenements to another for terme of life, the remainder to an other

other in fee, & the collaterall auncester confirmeth the estate of the tenant for terme of life, & bindeth him and his heirs to warrantise for terme of life of ꝯ tenāt for terme of life & dieth and the tenant in the tail hath issue and dieth, now this issue is barred to aske ꝯ tenemēts by writ of Formedon during the life of the tenant for terme of life, because of the collaterall discent vpon the issue in the tayle. But after the decease of the tenant for terme of life, the issue shal haue a Formdon &c. And vpō this I haue heard a reason that this case shall proue by an other case, that is to say, if a man let his land to another, to haue and to hold vnto him and to his heirs for terme of an others life, and the lessour dyeth, lyuing him to whose lyfe &c. And a stranger entreth into the land, that the heire of the lessee may put him out for this that in the case next aforesaid, in so much that a mā may binde him and his heires to warrant to the tenaunt for terme of lyfe, all onely during the life of the tenaunt for terme of lyfe, and the warrantise discendeth to the heire of him that made the warrantise, the which warrantise is no warrantise of inheritaunce, but all onely for terme of anothers lyfe, by the same reason where tenements bee lette to a man, to haue and to holde to him and to his heires for terme of an others lyfe, if the father die, liuing him to whose life &c. his heire shall haue the tenementes liuing him to whose life &c. For they haue, said, that if a man grant

an annuity to another, to haue & to take to him & to his heires for terme of anothers life if the grauntee die &c. That after his heire shal haue the annuitie during the life of him to whose life &c. Quære de ista materia &c.

But where such a lease or graunt is made to a man and his heires for terme of yeeres, in this case the heire of the lessee & the grauntee shall neuer haue after the death of the lessee or the grauntee that, that is so letten or granted, for this that it is a chattel real, and al chattels reals by the common law, shal come to the executors of the grauntee or the lessee, & not to the heire &c.

Also in some cases it may be, that howbeit that a collateral warrantise be made in fee &c. yet such warrantise may be defeated and aniented. As the tenant in the tatle discontinueth the taile in fee, & the discontinuee is disseysed, & the brother of the tenãt in the tatle releaseth by his deed to the disseisor al his right &c. with warrantise in fee, and dieth without issue, and the tenant in the tatle hath issue & dieth, now the issue is barred of his action by force of the collaterall warrantie descending vpon him, but if after this the discontinuee enter vpõ the disseisour, then may the heire in the taile haue his action of Formedon &c. for this that the warranty is aniented & defeated. For when the warrantise is made vnto a man vpon any estate that then he had, if the estate be defeated, the warrantie is defeated.

In

In the same maner it is if the discontinuee make a feoffement in fee reseruing to him certein rent, & for default of paiment a reentre &c. & a collateral auncester releaseth to the feffee ỹ hath estate vpon condition &c. & dieth without issue, though that the warrãty discended vpon the issue in the tatle, yet if after the rent be behind, and the discontinuee entreth into the lãd &c. then the issue in the tatle shall haue his recouery by a writ of Formedon, for this ỹ the warranty collateral is defeated. And so if any such collaterall warranty be pleaded against the issue in the tatle in his actiõ of Formedon, he may shewe the matter as is aforesaid, how the warrantie is defeated, and so he may well maintaine his action.

Also if a tenãt in the tail make a feffemẽt to his vncle, & after his vncle maketh a feffemẽt in fee with warrãtise &c. to another, & after the feffee of the vncle enfeffeth against the vncle in fee, & after the vncle enfeffeth a stranger in fee without warrãtise & dieth without issue, & the tenant in ỹ tatle will bring his writ of Formedon against the strãger that was last feffee, & that by the vncle, in this case the issue shal neuer be barred by the warrãty ỹ was made by the vncle of the said first feffee of his vncle, for this that the said warrantise was defeated & antiẽted, for this that the vncle tooke again to him as great estate of his said first feoffee to whom the warrantie was made, as the same feffee had of him. And the cause why the warrantie

rantie is anuented in this case, is this, that is to say, that if the warrantise were in his force, then the vncle shall warrant a fee simple vnto himselfe, ỹ may not be, but if the feffee made estate to the vncle for terme of life or in fee tail, sauing the reuersion vnto him &c. Or that he made a gift in the taile to the vncle, or a lease for terme of life, & ỹ remainder ouer &c. In this the warrantise is not all vtterly anuented, but it is put in suspence during the estate that the vncle had, for after this that the vncle is dead without issue, then he in the reuersion, or he in the remainder shall barre the issue in the taile of his writ of Formdon by the collateral warrantise, in such case &c. But otherwise it is where the vncle had as great estate in the lãd by the feffee to whom the warrãtise was made as the feoffee had of him &c.

Also if the vncle after such feffement made with warrantise, or a release made by him ẅ warrantise be attaint of felony, or outlawed of felony, such collateral warranty shal not barre nor greeue the issue in the taile, for this that by the attainder of felony, the bloud is corrupt betweene them &c.

Also, if tenaunt in the taile be disseised, and after maketh a release to the disseisor ẅ warrantise in fee, and after the tenant in the taile is attaint or outlawed of felony, and hath issue and dieth, in this case the issue in the taile may enter vpon the disseisour.

And the cause is for this, ỹ nothing maketh dis-

diſcontinuance in this caſe but the warranty, & the warranty may not diſcend to the iſſue in the taile, for this that the bloud is corrupt betweene him ỹ made the warrantiſe & the iſſue in the taile, for the warrantiſe alway abideth at the common law, and the common lawe is ſuch that when a man is outlawed or attaint of felony, which outlawry is an attainder in the law, that the bloud betweene him and his ſonne and all other which ſhould bee ſaid his heires is corrupt, ſo ỹ nothing by diſcent may diſcēd to any ỹ may be his heire by the cōmon law: & that wife of ſuch a mā that is ſo attaint ſhal neuer be indowed in the tenements of her huſband ſo attaint &c. And ỹ cauſe is, becauſe men ſhould more eſchew to do felony &c. But the iſſue in the tayle, as to the tenements tayled, is not in ſuch caſe barred, becauſe he is inheritable by force of the ſtatute, and not by the courſe of the common law. And therefore ſuch attainder of his father or his aunceſter in the taile &c. ſhall not put him out of his right, that he ſhould haue by force of the taile.

Alſo, if tenaunt in the tayle enfeoffe his vncle which enfeffeth another with warranty &c. if after the feoffee by his deede releaſe to the vncle all maner of warranty, or all maner of couenants reals, or al maner of demaunds, by ſuch releaſe the warranty is extinct. And if the warranty in ſuch caſe bee pleaded againſt the heire in the tayle that bringeth his writ of Formedone to barre the heire of

his

his action, if the heire haue and plede the said release &c. he shall defeate the plee in barre &c. and many other causes and matters there be whereby a man may defeate warranties.

And it is to witte, that in the same maner as collaterall warranty may be defeated by matter in deed or in law, in the same manner may lineal warranty be defeated &c. For if the heire in the taile bring a writ of Formedone, and a lineall warranty of his aunceitor inheritable by force of the taple be pleaded against him with that the assets to him discended of fee simple by the same aunceitor that made the warranty, if the heire that is demaundant may admull and defeate the warranty, this sufficeth to him, for the discent of other tenements of fee simple make nothing to barre the heire without the warranty &c.

FINIS.

¶ Here beginneth the Table of this preſent Booke.

NOw haue I made for thee my ſonne three Bookes. The firſt is of Eſtates that men haue of lands or tenements, that is to ſay.

1 Of Tenant in fee ſimple. 2.
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And know thou my sonne, that I will not that thou beleeue, that al that that I haue said in the said bookes is law, for that will I not take vpō me, nor presume: but of those things that be not law, inquire and learne of my wise masters learned in the law.

Notwithstanding, though that certaine things that be noted and specified in the said

Bookes

The Table.

Bookes be not Lawe, yet such thinges shall make thee more apt and able to vnderstand, and learne the Argumentes and the reasons of the law: For by the arguments and the reasons in the law, a man may more sooner come to the certaintie, and to the knowledge of the Law.

Lex plus laudatur quando ratione probatur.

E. A. C. P
6/13/08

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rent charge vt et 2 causes of
disseisin of rent seck vt 49

An other disseisin of ye saide rent 49

Warrenters be in 2 manners vz at
ye comon lawe and accordinge
to enstome vt //

[illegible] 49

The lawe will constreynt parce=
ners to make particon // 50

The manners of makeing party=
cons // 50

A writt de particone facienda lyeth
against such parceners as will
not make particon // 51

The Sheriff in proper person shall
goe to the landes and make par=
ticon by xij men of his bali=
wicke and assigne the same
and make notice to ye iustices
under his seale and the seales
of xij men // 51

Particon by agreement may be made
aswell without deed and with deed. 51

Particon must be of equall value // 51

His rent reserved is rent charge &
not rent service // 51

Cont art parceners at ye comon
lawe but woomen and heires of
woomen // 51

Particon made by parceners of la=
ndes in fee symple at full agee
viz xxj yeares is good for ever
but the issue of thone in taile may
disagree & enter and occupie in

[illegible]
case is of women being parceners
and maryed may after ye death
of their husbandes defeat their
particion but before not yet her
parte be lesse then ye other in
value // 52

The younger parcener being under
age of xxj yeares may defeate
the particion and at full age, yet
she take not the whole profittes of
her parte after she come to full
age, but halfe the profittes she
may take and leave the other to
her sister // 52

A grant release, confirmacion obli=
gation or other writeing made
by one under the age of xxj
yeares or a Baylifte or receiver
noth any man may be avoyded
and one under that age shall not
be sworne in a Jury or inqui=
sicion 52

The issue of ye younger sister being
parceners having a fee simple
allotted to her and by her sold may
eyther eyther enter to or by writ
of formedon comence suite & haue
and enioye the landes tailed noth
his Annite noe le reasones //

The like case // 53

If one parcener hant her parte lawfully defeated she may enter into and occupie the others landes and make new particon // 53

A writ of particon lieth against a tenant by curtisie but not for him vt le reason // 54

Parcener by custome of Gavelkinde in kent being sonnes shall inherit and make particon as females doe // 54

The custome of many places in England is, that ye wife shall enioye the whole land of her husband in name of her dowrie; And ye husband cannot by any cautele or devise defraud her thereof // 11